

United States
Circuit Court of Appeals ²

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

R. P. BUTCHART and CLARK M. MOORE,
Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME III.
(Pages 673 to 942, Inclusive.)

Upon Writ of Error to the United States District Court of the
District of Oregon.

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F. D. MONCKTON,
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Upon Writ of Error to the United States District Court of the
District of Oregon.

THE CITY OF CENTRALIA.

Centralia, Washington, April 25, 1916.

Oregon Portland Cement Co.,

Dear Sirs:

Yours of April 11th was received; was pleased to hear that you was expecting to be able to quote cement prices soon; now could you give me some idea what the price would be f o b Centralia. Do you think you could make a price at \$2 per bbl., or something like that; what you say to me will be strictly private. We will be ready to use cement about the middle of May; would you care to have someone represent you here in Centralia. I would be very pleased to hear from you as soon as convenient how you are getting along.

Yours very truly,

F. R. CLARK.

Filed December 24, 1920. G. H. Marsh, Clerk.
[604]

Plaintiff's Exhibit No. 151.

SP&S will publish rate $13\frac{1}{2}$ on cement C. L. from Irvin, Washington, to Vancouver, Washington and Portland, Oregon, if Irvin plant secure contract for Interstate Bridge cement.

W. D. SKINNER,

T. M.

Portland, Oregon, 3/6/15.

Filed December 24, 1920. G. H. Marsh, Clerk.
[605]

Plaintiff's Exhibit No. 152.

W. D. Skinner, Traffic Manager,
S. P. & S. Ry. Co.,
Portland, Oregon.

Dear Sir:

Referring to pencil memorandum you gave the writer on Saturday, the 6th inst., in which you agreed to publish $13\frac{1}{2}\text{¢}$ rate on cement from Irwin, Washington, to Vancouver, Washington, and Portland, Oregon, provided we secured Interstate bridge contract, would say that we have closed contract to furnish that cement, and confirming the writer's talk with you on the 6th inst., please see that that rate is published with the least possible delay, advising us as soon as possible when same will become effective and whether intermediate points will take the same rate.

Very truly yours,
INTERNATIONAL PORTLAND CEMENT
COMPANY, LTD.

Sales Manager.

B:R.

Filed December 24, 1920. G. H. Marsh, Clerk.
[606]

Plaintiff's Exhibit No. 153.

DAY LETTER.

March 11, 1915.

W. D. Skinner, Traffic Manager,
S. P. & S. Ry. Co.,
Portland, Oregon.

We have not yet received copy of tariff covering rate to Vancouver and Portland that you and your Spokane agent agreed to give us. Acting upon agreement we have contracted to furnish approximately ten thousand tons. Must have tariff effective at earliest possible date. Answer.

**INTERNATIONAL PORTLAND CEMENT
COMPANY, LTD.**

TELEGRAM.

Portland, Oregon, March 11, 1915.

International Portland Cement Co. Ltd.,
Spokane, Washington.

Wire date as explained Mr. Berry by telephone ninth and letter to-day my hands temporarily tied as to publication tariff. Have discussed situation fully with Pacific Bridge Company who are satisfied to leave matter my hands for few days when hope be able advise definitely.

W. D. SKINNER.

Filed December 24, 1920. G. H. Marsh, Clerk.
[607]

Plaintiff's Exhibit No. 163.

J. H. Block. November 10, 1920. Page 2.
“after you left Chicago, the Association proceed-

ings were very interesting, and I believe that a great amount of good for the industry was accomplished, and my only regret was, that you were not there, as I am certain you would have enjoyed most of the meetings, although they are usually tiresome. Everything I had on my mind to discuss with our friends, terminated satisfactorily to us, and in that way I felt, that my trip to Chicago was a very profitable one."

* * * * *

Regarding the Government bids, which will be received here on May 25th, I would say, I am putting in a bid for the Oregon Portland Cement Co. at our regular dealer's price, which will be high, but which will get our name before the Reclamation Service. In Montana, we will bid \$1.50 net f. o. b. Trident. In Colorado, I have not definitely decided whether to bid more than \$1.00, or not, but am afraid to bid much higher than that.

* * * * *

I am going to Portland, Oregon, via San Francisco, where I will see our friends, and I am very much pleased to have received letters since I saw you, from Mr. Erlin, of the Pacific Portland Cement Co., and Mr. Muhs, of the Santa Cruz Co., asking, if it would not be possible for me to go to Portland via San Francisco, so as to discuss matters of interest. As you know Mr. Leonardt was here, and went via Portland, Colorado to Ogden, where he will see Mr. Pingree, as well as Mr. Day, and make an effort to buy the Ogden plant.

I am enclosing herewith, for your information, correspondence I received from Mr. Short regarding the Lewiston proposition, all of which is self explanatory, and it is my candid opinion, that Mr. Morse certainly made a hell of a mess handling [608] this proposition, and it certainly seems now

PLAINTIFF'S EXHIBIT No. 163—Cont'd.

that the opportunity is lost to us. However, I am enclosing you, herewith, copy of a letter I have just written Mr. Short, in which I make a suggestion, which may, or may not, have any merit. Of course, I leave this entirely to you to decide. In case another cement company goes into Montana, at Lewiston, we will have lost at least one-third of our business, even if we could be able to maintain good prices."

Filed December 24, 1920. G. H. Marsh, Clerk.
[609]

Defendants' Exhibit No. 1.

CONSTITUTION.

1. The name of the Association shall be ASSOCIATION OF AMERICAN PORTLAND CEMENT MANUFACTURERS.

(Amended May 10, 1916.)

The name of the Association shall be PORTLAND CEMENT ASSOCIATION.

2. The Association is formed for the purpose of discussing the various questions of interest to the industry arising from time to time, and to exchange views as to the best method of manufacturing, extending, developing and conducting the

business, and to do all things incidental and conducive to the attainment of the above objects.

3. The business office of the Association shall be at the office of the Secretary of the Association.

4. The management of the Association shall be vested in an Executive Committee consisting of nineteen members, viz: The President, two Vice-Presidents, the Treasurer, and fifteen other members of the Association, but this number may be increased by such other members and such other officers as the Association may from time to time appoint by an amendment to its By-Laws.

5. The Association has no Capital Stock, and the members thereof shall be composed of the subscribers and their associates and of such persons as may from time to time be admitted by vote in such manner and upon such requirements as may be prescribed by the By-Laws. The Association shall, nevertheless, have power to exclude, expel or suspend members for just or legal cause subversive of the best interests and [610] morals of the business, and in such legal manner as may be ordained and directed by the By-Laws.

6. The By-Laws of the Association shall be admitted and taken to be its laws subordinate to this Constitution and the Constitution of the United States; they shall be altered and amended as provided for by the By-Laws themselves, and shall prescribe the powers and functions of the Executive Committee herein mentioned and those to be hereafter elected, the times and places of meetings of the Committee and this Association, the number of

members who shall constitute a quorum at the meetings of the Association and of the Committee, the qualifications and manner of electing members, the manner of electing officers, and the powers and duties of such officers, and all others concerned, and all internal arrangements of the said Association.

7. Proposed amendments to the Constitution signed by at least three (3) members must be presented in writing to the Executive Committee at least two (2) weeks before the next meeting of the Association. In the notices of this meeting the proposed amendment or amendments shall be presented. At the meeting, the proposed amendment or amendments may be discussed and amended. They shall then be sent out to letter ballot. If two-thirds of the total membership as signified by letter ballot are in favor of the amendment or amendments, it or they shall be adopted.

BY-LAWS.

Article I.

Members.

Section 1. Any corporation, firm or individual engaged in the manufacture of Portland cement in the United States or Canada [611] is eligible for membership.

Section 2. Any corporation, firm or individual engaged in the manufacture of Portland cement outside of the United States or Canada is eligible for Foreign Membership. Foreign Membership entitles the holder to all the privileges of the Association with the exception of voting and holding office.

Sec. 3. Any individual having been actively engaged in the manufacture of Portland cement may be elected to Honorary Membership by the Executive Committee. Honorary Membership entitles the holder to all privileges of the Association without dues, with the exception of voting and holding office.

Sec. 4. Any corporation, firm or individual, as above limited, can become a member of the Association upon being proposed by two members of the Association and being elected by a majority of the Executive Committee.

Sec. 5. Applications for membership and resignations from membership must be transmitted in writing to the Secretary.

Article II.

Officers and Their Elections.

Section 1. The Officers shall be a President, two Vice-Presidents, Secretary, Assistant Secretary, Treasurer and Assistant Treasurer.

Section 2. These Officers, except the Secretary, Assistant Secretary and Assistant Treasurer, shall be elected by ballot at the annual meeting of the Association in December and shall hold office for one year or until their successors are duly elected.

The Secretary, Assistant Secretary and Assistant Treasurer shall be elected by the Executive Committee.

Section 3. The Executive Committee shall consist [612] of the President, two Vice-Presidents and Treasurer and fifteen members, being elected by ballot at each annual meeting in December.

A majority of the Committee shall constitute a quorum.

Sec. 4. The salaries of the officers and all employees of the Association shall be fixed by the Executive Committee.

Sec. 5. The President, Vice-President and Treasurer and members of the Executive Committee, elected under these By-Laws, shall serve for their respective terms to which they have been duly elected, or until their successors have been duly elected.

Sec. 6. The Executive Committee shall have the power to fill any vacancies occurring in their number by death, resignation, or otherwise, and to appoint such committees as may be necessary to carry out the objects of this Association. They shall also fill vacancies in the general offices.

Sec. 7. At all meetings each membership shall have a vote.

Sec. 8. Except the Secretary, Assistant Secretary and Assistant Treasurer, the election of officers and members of the Executive Committee shall be by ballot. The Executive Committee, before each annual meeting, shall appoint a Nominating Committee of five, from members of the Association, not members of its own body, whose duty it shall be to nominate a full list of officers. The list of nominations so made shall be submitted to the membership not more than eight (8) weeks, nor less than four (4) weeks before the coming annual meeting.

Further nominations signed by at least five members may be submitted to the Secretary in writing

at least two (2) [613] weeks before the annual meeting, and such nominations shall also be submitted to the membership on the official ballot.

Article III.

Duties of Officers.

President.

Section 1. It shall be the duty of the President to preside at all meetings of the Association and of the Executive Committee. He shall himself be ex-officio a member of all committees. He shall sign all orders on the Treasury for the payment of money; he shall see to the enforcement of the By-Laws, and shall carry into execution all resolutions of the Association and of the Executive Committee.

The President may call a meeting of the Executive Committee at any time.

Vice-Presidents.

Section 2. The Vice-Presidents shall, in the event of the death, resignation, disability or absence of the President, perform all the duties of said officer.

Secretary.

Sec. 3. It shall be the duty of the Secretary to give notice of all meetings of the Association and of the Executive Committee; to keep a record of all proceedings had at such meetings; to preserve all communications received by him pertaining to the affairs of the Association; to draw and attest all orders on the Treasurer; to keep a roll of the members of the Association; and to perform such other duties as usually pertain to the office of Secretary,

or as the Association or Executive Committee may require.

Treasurer.

Sec. 4. The Treasurer shall receive and collect the dues of the members and all other moneys otherwise belonging to the Association, and shall deposit the same in a depository [614] to be designated by the Executive Committee. He shall pay out such moneys only upon the order of the President, attested by the Secretary, and shall preserve the proper vouchers for all payments so made. He shall keep proper books of account, which shall be open at all times to the inspection of the Executive Committee, and at the close of his term of office he shall deliver to his successor all moneys, books, papers and other valuables belonging to the Association, which shall be in his custody or possession.

Article IV.

Meetings.

Section 1. The annual meeting of the Association shall be held on the second Wednesday in December. The place for holding the Annual Meeting and the time and place for holding the other regular meetings shall be fixed by the Executive Committee.

Sec. 2. Special meetings may be called whenever the Executive Committee shall deem it necessary, or upon the request in writing, to the President, of five (5) members.

Sec. 3. A majority of all the members shall constitute a quorum.

Sec. 4. Order of business:

Roll call.

Minutes of last meeting shall be read.

Reports of officers.

Reports of committees.

Unfinished business.

New business. [615]

Article V.

Dues.

Section 1. The fiscal year shall begin on the first day of January, and dues shall be payable quarterly, in advance on the first day of January, April, July and October.

Sec. 2. The annual dues of each member shall be two and one-half mills per barrel of cement produced during the second preceding calendar year, provided that the annual dues of any member shall not be less than \$200.

(Amended May 10, 1916.)

The annual dues of each member shall be seven and one-half mills per barrel of cement produced during the second preceding calendar year, provided that the annual dues of any member shall not be less than \$200.

Sec. 3. The annual dues of each foreign member shall be one-half of those paid by a member.

(Amended May 10, 1916.)

The annual dues of each foreign member shall be two and one-half mills per barrel of cement produced during the second preceding calendar year, provided that the annual dues of any foreign member shall not be less than \$200.

Sec. 4. Any member of the Association whose dues shall remain unpaid for a period of three (3) months shall forfeit the privilege of membership. If such member neglects to pay the dues within thirty (30) days thereafter and after notification [616] from the Secretary, the name of such member may be stricken from the roll of membership by the Executive Committee.

Article VI.

Discipline of Members.

Any member may be suspended or expelled for causes by a vote of three-fourths of all the members of the Association, as expressed by secret ballot, and upon charges preferred by the Executive Committee, one month's previous notice in writing having been given to the member with a copy of the charges preferred against him.

Article VII.

Amendments.

Section 1. Proposed amendments to these By-Laws, signed by at least three (3) members, must be presented in writing to the Executive Committee at least four weeks before the next meeting of the Association. In the notices of this meeting, the proposed amendment shall be printed. At meeting, the proposed amendment may be discussed and adopted by a two-thirds vote of those present, but, if amended, it shall be passed to letter ballot. If two-thirds of the vote obtained by letter ballot are in favor of the proposed amendment, as amended, it shall be adopted.

Sec. 2. The Executive Committee is authorized to number articles and sections of the By-Laws to correspond with any changes that may be made.

Filed December 23, 1920. G. H. Marsh, Clerk. [617]

Defendants' Exhibit No. 2.

Oswego, Oregon, May 13, 1915.

Mr. R. P. Butchart,
Tod Inlet, B. C.

Dear Mr. Butchart:

Yours of May 10th and May 11th received; also the ck for \$2000.00 which will be sufficient to tide matters over until reorganization is completed. Many thanks for your promptness. Mr. Cotton has been out of city and will not return until Saturday. Mr. Johnson in office of Teal & Minor, is at work on papers for incorporating Oregon Portland Cement Co. and papers will be ready to submit to Mr. Cotton on Saturday. The incorporating papers previously submitted by Mr. Boettcher will be followed as closely as possible. They should be ready to file by Tuesday or Wednesday of next week. It now looks as though we can incorporate under laws of the State of Washington as advantageously as the State of West Virginia and save both time and expense in case we would have to take a street car from Portland to Vancouver, Wash., once a year to hold our stockholders meetings but that is only 30 minutes ride and no great objection. I wrote your brother to ascertain if he were in a position to come

here and suggested to him that if so I would forward *all* our eastern contracts to him and have him call personally at New York to see F. T. Smidth & Co., Wilkesbarre, Pa., to see Vulcan Iron Wks., also Caldwell in Chicago. We desire some cancellations of equipments in all of these contracts and thought it would be most satisfactory to have it done by your brother through personal interview rather than by correspondence. Hope to hear from your brother within next few days. If you prefer I will forward the contracts to you explaining just what cancellations and [618] modifications we desire and you can then approve same before forwarding to your brother.

Note that you forwarded Oreg. Iron & Steel Contract to Mr. Boettcher and expect to receive his check within a few days. The local people are all paying in but some are always slow and I am expecting to have them all in by end of week. Shall execute note tomorrow to cover the \$2000.00 and will forward same to you with assignment to Ladd & Tilton Bank. You can then write them enclosing note and assignment requesting them to deduct the \$2000.00 together with the \$1050.00 note and assignment they already hold, from your second call, or rather you can deduct same and request them to hold notes and assignments to apply on 2d call under reorganization call. Your reply from them will then serve as a receipt to you. Will deposit the \$12,000.00 additional bonds as security to you personally with Ladd & Tilton to be held as security for you until reorganization is completed.

Will forward incorporation papers to you for your approval before filing.

Am doing all I can to have the County Commissioners of Multnomah County use concrete for the 70 miles of pavement. Have injected the element of Home industry which is a big factor. Do you know of some good responsible contractor there who would come here to bid on work? We should have somebody we can depend upon to give us order for cement at price made now confidentially to him before contract is awarded. Have written Pat Moran of Sale Lake City, Utah, who is a big contractor there as well as Pres. of Port. Cem. Co. of Utah. Will know in a few days more whether he can come or not.

Sincerely yours,

AMAN MOORE.

Filed December 23, 1920. G. H. Marsh, Clerk.
[619]

Defendants' Exhibit No. 3.

PORTLAND CEMENT CO.

Main Office: 1402-3 Yeon Building,
Portland, Oregon.

Factory: Oswego, Oregon.

Oswego, Ore., May 16, 1915.

Mr. R. P. Butchart,

Tod Inlet, B. C.

Dear Mr. Butchart:

Yours of 14th inst. from Seattle received this morning. In reference to the pavement matter

Mr. Coats has been grossly misinformed, no doubt, by his local agent Mr. Nickerson. The talk I made to the Commissioners was made at an open session, with all three commissioners present and probably 30 others including contractors and others interested in the proposed paving. I had, just prior to meeting, introduced myself to Mr. Holbrook who was the first commissioner to arrive and had been requested by the commissioners to make the talk. I urged upon them 1st the durability of concrete vs. Bitumen. 2d The unfairness of permitting 2" Bitumen to compete on same basis as 6" concrete and 3d the question of Home Industry and retaining money within the State of Oregon, etc. I did state that the question of "Cement Trust" which the Evening Telegram was injecting into the proposition in order to support its unjust fight for Warrenite was a myth and that certainly our own plant in which approx. 200 stockholders residing in Portland and Oregon, were no parties to a cement trust which did not exist. I also advised them that while no definite statement or commitment was intended relating to price that I was sure they could depend upon prices being such that contractors could construct concrete [620] pavement at approx. the amount of estimate by commissioners i. e. \$1.20 per sq. yd. Also that the cement plants of Calif. for State roads had during past years made a special *Mill* price of \$1.50 (this is public property and commissioners were already aware of fact) I made no statement other than a diplomatic presentation against the possibility of

a "cement trust," knowing that we must deal with contractors who contemplate bidding on the work and if any reductions were to be made it would be secretly and in strict co-operation with one or more contractors before bids are filed. I had previously approached Nickerson (Coats salesman), and had asked him frankly where we were to participate—if they would divide order—they furnishing until our plant was producing and we to furnish balance. Mr. Nickerson seemed greatly chagrined to think we should want any part of business—tried to scare me off by stating Washington plants were willing to furnish at an actual loss of 20¢ per bbl. in order to beat Bitumen gang on these roads—that they would deliver @ 1.12 per bbl. if necessary—that it would be fine and proper for our plant to furnish instead of Wash. as we could do so at cost or a little less and thus save loss to them. I informed him, that while you were the one who would have to pass on such important matters, yet I felt sure we would want *no* business without profit and furthermore advised that if any cutting should be done we would have to be very careful so as to get every cent possible out of the job and that I hoped that we would be able to realize \$1.75 f. o. b. Portland. Nickerson answered that this would be impossible as price would certainly have to go below \$1.50.

I was also informed by Nickerson that their employed engineer Mr. Ritzie was on the ground conducting the campaign for Wash. plants jointly and that the expense was being paid by [621]

the Wash. mills. I told him I was quite sure that if our company participated in the order we would be quite willing to stand our part of Ritzie's expense. I then urged on Nickerson the necessity for local enlightenment on concrete vs. Bitumen pavements. I had learned that 90% of local people favored Bitumen because they had been educated by years of intelligent advertising, by retainers to many of the best legal firms in Portland, by political pull, by influence of other paving companies (formerly asphalt) with several of the Portland banks—all these factors together with constant and systematic publicity through the local papers had molded public sentiment against concrete and in favor of Bitumen—especially when Portland did not have any first class *Concrete* pavements but did have several miles of *very* poor *Hassam* which local people took as a fair example of *concrete*. I urged the necessity of enlightenment of the public, but was informed by Nickerson that they were running their own campaign, did not desire any suggestions and in fact he became so undignified to think that I would want to even discuss the matter of our participating in either the campaign or the cement order that I left him stating that I would do what I could independently but assured him would do nothing except in co-operation with Mr. Burch, Pres. of Beaver Portland Cement Co. of Gold Hill who I believe has done more already than Nickerson, Ritzie and all the others combined to show up the real merits of concrete pavement. After this break with Nickerson I have been work-

ing closely with Mr. Burch in an endeavor to enlighten the local people I had found that the authorities of the Portland Chamber of Commerce had appointed a committee of 3 who were unanimously against concrete also Messrs. Teal, Cotton, Ladd, Mills, Ainsworth and nearly all of our own stockholders honestly believed Bitumen pavement was far superior to concrete. This sentiment was almost unanimously held by all [622] the most influential men of Portland and especially the largest tax-payers. I have found them open to reason—their convictions were honest and I am securing the necessary data and facts from the east & middle west where concrete has recently been substituted for Bitumen and Mr. Teal has promised to act for us in behalf of concrete, with the local interests, when the facts and data are before him to substantiate my statements.

I have written contractors in several cities including Pat Moran of Salt Lake City, also have written Mr. Leonardt of Los Angeles urging them to come here and bid on the work. Have also written Mr. Morse in Denver to see if he can induce a good contractor from there to come here to bid on work. Am convinced that we should name no price to anybody except a party or parties on whom we can absolutely rely upon to keep the price in strict confidence. We cannot get order for cement unless we have a contractor on whom we can absolutely rely upon secure the contract. I am convinced the contract can be secured in competition with Bitumen and on a basis such that

a *fair* price can be paid for the Portland cement and still net the contractor a profit of from \$100,000 to \$200,000.00. If I were foot-loose myself and had my own capital available for operating capital I would not hesitate to bid in the work, but with my time taken in collecting in subscriptions, repairing incorporation papers for reorganization, answering correspondence and personal worries, I have not been able to give as much time to this matter as I would like to do, i. e., collecting data as to cost & kind of rock, sand, water, sub-drainage, excavation, length of haul for rock, cement, sand, and all such matters entering into the construction. Do you not have [623] some absolutely reliable contractor who would come here and bid on the work and if not do you not think your brother could secure one in Toronto. Being over a million dollar contract it ought to invite contractors from far and near.

Sincerely yours,

AMAN MOORE.

P. S.—Expect Mr. Hunt here very shortly, when we can take up matter of sacks.

Filed December 23, 1919. G. H. Marsh, Clerk.
[624]

Defendants' Exhibit No. 4.

PORTLAND CEMENT CO.

Main Office: 1402-3 Yeon Building,
Portland, Oregon.

Factory: Oswego, Oregon.

Oswego, Oreg. May 17, 1915.

Dear Mr. Butchart:

Have just received the enclosed wire from Mr. Moran of Salt Lake City, who is one of the most successful paving contractors in the West as well as President of Port. Cement Co. of Utah. We can safely tie up to him and I have urged him to come on to bid on the work. He is absolutely safe, financially & otherwise. Kindly return his telegram after reading. Will make no commitment on price until after consulting you and then only after Moran has estimated all other costs, etc.

After he has every thing in shape shall probably request you to meet him personally either at Seattle or Victoria to settle matter of price with him and to meet him personally. If we secure order on price named to him, we would of course have to begin deliveries within a week or two. You could either supply from Victoria plant or arrange with Mr. Coats to supply from his plant, as you might desire. Have only 3 local people left to pay in the 50% (R. P. B.) and these have promised within day or two. Cotton is in his office today and at conference it was decided to incorporate under laws of Utah instead of Washington as the latter states requires one resident director, which we do not have

and also requires a *majority* of directors to make a quorum which we could not do with so many directors residing away. In Utah $\frac{1}{4}$ of directors may constitute a quorum and we will have one resident director there. Mr. C. W. Nibley. We can also elect directors for three years in Utah instead of one. Kindly advise if the following board will meet your approval. [625]

3 year terms R. P. Butchart, C. Boettcher, Aman Moore.

2 year terms A. S. Butchart, A. C. Smith, C. W. Nibley.

1 year terms T. B. Wilcox, C. Leonardt and either
Teal)
Cotton) ?
Minor)

one of these three to be decided upon to serve on our board as advising attorney.

We will not be able to provide for the exclusion of Preference shares from voting as all shares must vote on equal terms—which is only fair to the Preference share holders. We cannot provide for retiring of Preference shares except by consent of share holders.

Mr. Cotton wire to Salt Lake for complete laws for incorporation work which should be mailed from there today and received here Wednesday. It will not take long to complete work after these papers arrive.

Sincerely yours.

AMAN MOORE.

P. S.—Have your note executed and will try to have copy of assignment ready to mail you tomorrow.

Filed December 23, 1920. G. H. Marsh, Clerk.
[626]

Defendant's Exhibit No. 5.

Oswego, Oreg., June 9, 1915.

Mr. R. P. Butchart,
Tod Inlet, B. C.

Dear Mr. Butchart:

The Ladd Bank received wire from Utah bank today at 3 P. M. advising draft had been paid. Tomorrow the bank will check over payments and advise you of same.

Referring to your letter of 8th received this morning, I am very sorry if you have misunderstood the intent of my former letter. The position of the Ladd Bank is one of Trustee for all old, new and holders under plan of reorganization. It is not a question of doubt as to payment of anybody's checks but purely a technical point as they see it, in compelling them to follow plan of reorganization, without any changes. If your checks are sent to be held by bank they cannot be counted as *paid* as required by reorganization plan. This plan however provides that 25% must be *paid in* therefore you could send your checks as desired by you, since you have already paid in first 25% excepting check of Cox Estate, check for which has already been returned to Toronto. If however Mr. Boettcher should fail to pay up his 50%—25% of which or one half amount must be absolutely *paid in* without any conditions whatever

attached before anything further can be done to carry out reorganization plan—then it would become necessary for you to release any conditions which you might place on your checks, having 50% actually *paid in* bank before M. Boettcher would become legally binding under his letter to you dated last June (just a year ago today). You could then release condition about holding checks permitting them to be collected with condition that all monies *paid in* by you should be returned to you after 60 days unless 50% of the total of \$360,000.00 had been paid [627] in. Now I hope I have made clear so that there will be no further misunderstanding. It is all technical points raised 1st to legalize reorganization and not to compel Ladd bank to violate terms thereof and 2d to legalize Mr. Boettcher's commitment in event he should fail to make payment after being advised that all others excepting you and he have paid in 50% and that your checks are in Ladd bank to cover 2d 25% payment, after he has made his payment of 50%.

Now in regard to advancing additional amount of cash. I only intended to hurry matters by suggesting that if you desire to send sufficient amount to cover back taxes approx. \$3500.00 I could go personally to the four county seats and pay these taxes and thereby save a week's time also stop expense of 15% we have to pay as a penalty for unpaid taxes. Also that I could and would have the County Clerks receipt these tax payments directly to you to be held by you as security until new

company funds were available. Also that these tax receipts were a first lien on our properties, real estate etc. and as such would take precedence over bonds outstanding. It is not imperative that these taxes be paid immediately but if you desire to do so I would have time now, while waiting for Mr. Boettcher to attend to it and thereby save time and annoyance later on, also, would stop the 15% interest on the amount.

If you prefer to postpone this matter as I would infer from your letter, will not urge the matter further. Regarding balance of funds I am now informed that we may have to legalize the old cement Securities Co. as well as O. D. & R. Ry. In that event the 2000.00 you advance will be short from \$600.00 to \$750.00 to tide matters over in the completing of reorganization. I had suggested that you advance another \$1000.00 to cover [628] this item but if you do not care to do so, I will try and cover it somehow, even though I may have to mortgage personal effects to do so.

I received your wire today regarding possible cement delivery. When I showed this wire to Mr. Moran he was so disappointed, that he did not put in a bid on the paving and will return to Salt Lake tomorrow morning. I do not think his disappointment was altogether due to our failure to quote price of less than \$1.75 to him as both Mr. Coats and Eden were with Mr. Moran and myself at Benson Hotel last evening and he seemed satisfied with the 1.75 price, with the assurance of Messrs. Coats & Eden that no other contractors

had a lower price. He was quite disturbed over the 10 yr. guarantee for maintenance as required and no bonding companies would execute bond for maintenance over 5 yrs.

The bids we opened at 11 A. M. and it took all day to tabulate and read bids. It will be a day or so before we will know whether contract will go to concrete or Bitumen.

I am returning stock subscription for you to sign and immediately return. This \$100.00 becomes a part of your present subscription which cannot be counted under plan of reorganization until 25% of total of 360,000.00 is paid into bank. Furthermore it becomes necessary for each *director* to sign one share before we can file papers and elect directors as incorporators. Each director must have signed for one share before he is qualified to act as a director. It therefore becomes absolutely necessary to have yourself and each of the other new directors sign for one share before our attorneys can make any further progress. It will only require a few days to complete incorporation and organization of new company after each director has signed for one share of stock as provided in this subscription paper.

Kindly return to me after signing as I desire to have Mr. [629] C. W. Nibley of Salt Lake City sign while here on Sat. Sun & Monday next. After I secure his signature will then forward to your brother at Toronto.

Sincerely yours,

AMAN MOORE.

Filed December 23, 1920. G. H. Marsh, Clerk.
[630]

Defendants' Exhibit No. 6.

In the Circuit Court of the State of Oregon for the
County of Multnomah.

OREGON PORTLAND CEMENT COMPANY, a
Corporation, AMAN MOORE on Behalf of
Himself and Other Stockholders as Herein-
after Set Out,

Plaintiffs,

vs.

PACIFIC PORTLAND CEMENT COMPANY, a
Corporation, STANDARD PORTLAND
CEMENT COMPANY, a Corporation,
SANTA CRUZ PORTLAND CEMENT
COMPANY, a Corporation, HENRY COW-
ELL LIME and CEMENT COMPANY, a
Corporation, SUPERIOR PORTLAND
CEMENT COMPANY, a Corporation,
WASHINGTON PORTLAND CEMENT
COMPANY, a Corporation, OLYMPIC
PORTLAND CEMENT COMPANY, a
Corporation, INTERNATIONAL PORT-
LAND CEMENT COMPANY, a Corpora-
tion, LEHIGH PORTLAND CEMENT
COMPANY, a Corporation, THREE
FORKS PORTLAND CEMENT COM-
PANY, a Corporation, UNION PORT-
LAND CEMENT COMPANY, a Corpora-

tion, CEMENT SECURITIES COMPANY,
a Corporation, COLORADO PORTLAND
CEMENT COMPANY, a Corporation,
RIVERSIDE PORTLAND CEMENT
COMPANY, a Corporation, CLARKE M.
MOORE, R. P. BUTCHART, ANDREW
C. SMITH, PAUL C. BATES, WIRT
MINOR, WILLIAM JOHNSON, M. J.
BALLARD, L. C. NEWLANDS, J. G. WIL-
SON, CHARLES BOETTCHER, and
GEORGE MACDONALD,

Defendants.

COMPLAINT.

Plaintiffs allege:

I.

That Oregon Portland Cement Company is a corporation organized and existing under the laws of the State of Nevada and conducting a business within the State of Oregon at the city of Portland therein, and at the town of Oswego, and owning properties at various places within the state of Oregon.

II.

That Oregon Portland Cement Company was incorporated for the purpose of, and under its articles of incorporation is authorized, to engage in the business of quarrying limestone, cement operating tramways and railroads and manufacturing and selling Portland cement, and that its properties are located in [631] Clackamas County, Oregon, Polk County, Oregon, Douglas County, Oregon, and Sherman County, Oregon, and its

properties are now operating and it is producing, manufacturing and preparing to sell and selling Portland cement.

III.

That Pacific Portland Cement Company is a corporation organized and doing business under the laws of the State of Washington with its principal place of business at Seattle.

IV.

That Standard Portland Cement Company is a corporation organized and doing business under the laws of the State of California with its principal place of business at San Francisco.

V.

That Santa Cruz Portland Cement Company is a corporation organized and doing business under the laws of the State of California with its principal place of business at San Francisco.

VI.

That Henry Cowell Lime and Cement Company is a corporation organized and doing business under the laws of the State of California with its principal place of business at San Francisco.

VII.

That Superior Portland Cement Company is a corporation organized and doing business under the laws of the State of Washington with its principal place of business at Seattle.

VIII.

That Washington Portland Cement Company is a corporation *organization* and doing business

under the laws of the State of Washington with its principal place of business at Seattle.

IX.

That Olympic Portland Cement Company is a corporation organized and doing business under the laws of the State of [632] Washington with its principal place of business at Seattle.

X.

That International Portland Cement Company is a corporation organized and doing business under the laws of the State of Washington with its principal place of business at Spokane.

XI.

That Lehigh Portland Cement Company is a corporation organized and doing business under the laws of the State of Pennsylvania with its principal place of business at Allentown.

XII.

That Three Forks Portland Cement Company is a corporation organized and doing business under the laws of the State of Montana with its principal place of business at Butte.

XIII.

That Union Portland Cement Company is a corporation organized and doing business under the laws of the State of Utah with its principal place of business at Ogden.

XIV.

That Cement Securities Company is a corporation organized and doing business under the laws of the State of Colorado with its principal place of business at Denver.

XV.

That Riverside Portland Cement Company is a corporation organized and doing business under the laws of the State of California with its principal place of business at San Francisco.

XVI.

That Clark M. Moore is an officer and agent of Oregon Portland Cement Company; that George McDonald is an officer and agent of Oregon Portland Cement Company; that R. P. Butchart, Andrew C. Smith, Paul C. Bates, Wirt Minor, William [633] Johnson, M. J. Ballard, L. C. Newlands and J. G. Wilson are each of them directors or Oregon Portland Cement Company.

XVII.

That Pacific Portland Cement Company and Standard Portland Cement Company and Santa Cruz Portland Cement Company, and Henry Cowell Lime and Cement Company, and Superior Portland Cement Company, and Washington Portland Cement Company, and Olympic Portland Cement Company and International Portland Cement Company, and Lehigh Portland Cement Company, and Three Forks Portland Cement Company, and Union Portland Cement Company, and Colorado Portland Cement Company, are each of them companies which are authorized, and are engaged in, the business of manufacturing and selling Portland cement, and are conducting their business at the various principal places of business as hereinbefore set out, and that the business of these companies is naturally and if uninterrupted in direct competition with the business of Oregon

Portland Cement Company, and the business of each of said companies is naturally and logically competitive.

XVIII.

That Aman Moore is a stockholder in Oregon Portland Cement Company and is vice-president and treasurer of that company and was the person who promoted the incorporation of Oregon Portland Cement Company, and on behalf of that company secured subscriptions to the capital stock of that company in the amount of 8742 shares of preferred stock and 6024 shares of common stock, together with some seventy or eighty additional shares, from various subscribers who are now stockholders, and that the various subscriptions hereinbefore mentioned were obtained by Aman Moore upon representations [634] made on behalf of the Company, and with its knowledge, to the effect that Oregon Portland Cement Company was to conduct its business as an independent plant and in competition with all other companies which might desire to compete, and that the Oregon Portland Cement Company would make no agreements restricting its output or restricting its territory for sales, and at the time of the incorporation of Oregon Portland Cement Company on behalf of all the stockholders as a safeguard against the control of the corporation being secured or exercised on behalf of any competing company the articles of incorporation were made to provide for an executive committee of three persons whose duty it was to represent the stockholders and to be constantly and actively in touch with the business

of Oregon Portland Cement Company, and in the by-laws adopted by the corporation provision was made for an executive committee.

XIX.

That Oregon Portland Cement Company is the only company manufacturing Portland cement in the State of Oregon, and by reason of lesser freights is able to reach more cheaply Oregon points and southwestern Washington points than any other cement company, and the dealers at various points within said territories who are the handlers of Portland cement are fully cognizant of the fact that Oregon Portland Cement Company is able to at a lesser figure deliver to them cement, and Aman Moore acting on behalf of Oregon Portland Cement Company as its vice-president has for the last several years diligently spread among the dealers and people in the said territory the fact that Oregon Portland Cement Company could deliver to dealers an Oregon product at a lesser cost than other competing companies under fair competitive conditions, and there exists among the people and the dealers in said territories a [635] belief that the Portland Cement Companies generally are combined and exercise joint supervision and control over all sales made, whether made by one company or another, and Aman Moore on behalf of Oregon Portland Cement Company has created a goodwill of great value to Oregon Portland Cement Company by representations that Oregon Portland Cement Company would not combine with any other Portland Cement Company or with any other corporation for the purpose of restricting output,

reducing or eliminating competition, or for any purpose in anywise affecting the sales of Portland cement, and that these representations at all times have been known to the stockholders and directors of Oregon Portland Cement Company, have been made with their approval and under their authority and ratified by them.

XX.

That notwithstanding the purpose of the incorporation of the company, and notwithstanding the clearly illegal nature of their operations, in some manner unknown to the plaintiffs, Pacific Portland Cement Company, Standard Portland Cement Company, Santa Cruz Portland Cement Company, Henry Cowell Lime and Cement Company, Superior Portland Cement Company, Washington Portland Cement Company, Olympic Portland Cement Company, International Portland Cement Company, Lehigh Portland Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company, Cement Securities Company and Colorado Portland Cement Company, together with Charles Boettcher, Clark M. Moore, R. P. Butchart, Wirt Minor, William Johnson, M. J. Ballard, L. C. Newlands and George McDonald, have secured control of Oregon Portland Cement Company, and said parties are now controlling the majority of the directors [636] of Oregon Portland Cement Company, and that the said Pacific Portland Cement Company, Standard Portland Cement Company, Santa Cruz Portland Cement Company, Henry Cowell Lime and Cement Company,

Superior Portland Cement Company, Washington Portland Cement Company, Olympic Portland Cement Company, International Portland Cement Company, Lehigh Portland Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company, Cement Securities Company and Colorado Portland Cement Company, together with Charles Boettcher, Clark M. Moore, R. P. Butchart, Wirt Minor, William Johnson, M. J. Ballard, L. C. Newland and George McDonald, have effected and obtained such control because of and as a result of a conspiracy on the part of each of said corporations and persons for the purport of restricting the output of Oregon Portland Cement Company and for the purpose of forcing Oregon Portland Cement Company to charge for its products a rate to be fixed by said defendants, and to the total disregard of the best interests of Oregon Portland Cement Company; and said Pacific Portland Cement Company, Standard Portland Cement Company, Santa Cruz Portland Cement Company, Henry Cowell Lime and Cement Company, Superior Portland Cement Company, Washington Portland Cement Company, Olympic Portland Cement Company, International Portland Cement Company, Lehigh Portland Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company, Cement Securities Company and Colorado Portland Cement Company, together with Charles Boettcher, Clark M. Moore, R. P. Butchart, Wirt Minor, William Johnson, M. J. Ballard, L. C. Newlands and George McDonald, in pursuance

of their conspiracy, have agreed amongst themselves that Orgeon Portland Cement Company shall not ship or sell Portland cement except in certain territory, and that in all other territory one of the other cement companies [637] defendant herein shall have the preference, in that if Oregon Portland Cement Company should quote in any territory aside from that allotted to it prices upon cement that the same should be quoted at a rate satisfactory to said other cement companies.

XXI.

That in pursuance of this understanding and conspiracy alleged to have been participated in by all the defendants herein except Andrew C. Smith, Paul C. Bates and J. G. Wilson, said defendants have now combined in the form of a trust and a conspiracy in restraint of trade and commerce among the several states, and the Portland cement trade between the states of Oregon, Washington, Idaho, Montana, California, Nevada, Utah, Colorado and the Dominion of Canada, particularly British Columbia, is controlled by said defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, and said defendants and all of the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, are restricting the trade in Portland cement by preventing the shipment from one of the states above mentioned to the other of Oregon Portland cement, and are controlling the output of cement in the states above mentioned, and are regulating the price at which Portland cement must be sold in the above states, and that to carry out their

said conspiracy said defendants and all of the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, did on the third day of June, 1916, prepare a notice calling a special meeting of the board of directors of Oregon Portland Cement Company to be held in Portland, Oregon, at the hour of twelve o'clock noon, on Saturday, June 10, 1916, and said defendants and all of the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, caused notice to be given that at that place the by-laws of Oregon Portland Cement Company would be by [638] them amended in such manner as to eliminate the executive committee and thus place the entire control of the company in the hands of the directors, and also to place with the defendants R. P. Butchart, L. C. Newlands, Clark M. Moore, and George McDonald the complete control of this company; that Clark M. Moore, George McDonald and L. C. Newlands are the agents and confidential employees of R. P. Butchart and are dominated and controlled by said Butchart and were by said Butchart placed with Oregon Portland Cement Company as follows: George McDonald secretary, L. C. Newlands director and superintendent, and Clark M. Moore sales manager, for the sole purpose of placing the control of said Oregon Portland Cement Company in the sole hands and control of said R. P. Butchart; and that said R. P. Butchart is interested in and a heavy stockholder of Washington Portland Cement Company, one of the defendant Companies herein, and is the managing direc-

tor and in charge and control of the business of Vancouver Portland Cement Company, a cement company whose principal offices are at Victoria, British Columbia, Dominion of Canada; that the business of Vancouver Portland Cement Company, originally and naturally, and if uninterrupted by trade agreements, would be in competition with the business of Oregon Portland Cement Company and the other defendant companies hereinbefore mentioned, and it is alleged that said R. P. Butchart, because of his financial interest in Washington Portland Cement Company, Vancouver Portland Cement Company, and because of his affiliations through trade agreements to restrict competition, with all the other defendants herein, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, is incompetent, disqualified and an improper person to handle or conduct the affairs of Oregon Portland Cement Company, and while in control within the [639] past month has controlled the business of Oregon Portland Cement Company for the benefit of the other defendant companies hereinbefore mentioned, and has restricted its business and output, and has quoted prices at Seattle, Washington, of \$2.18 per barrel net, which is a price eighteen cents per barrel higher than the prices fixed for said Seattle, Washington, by the other defendant companies herein, and upon the 29th day of May, 1916, the defendants, except Andrew C. Smith, Paul C. Bates, and J. G. Wilson, agreed that Oregon Portland Cement Company should

sell its product for, and not be allowed to charge more or less than, the following schedule, to wit:

“To Dealers:

\$2.30 per barrel gross f. o. b. the cars on the terminal team track of any of the steam railroads, or f. o. b. cars at the dealers warehouse spur buying the cement, Or ex dock,

\$2.35 per barrel gross f. o. b. any other spur within the city limits of Portland.

Less 10¢ per barrel dealers commission.

To Consumers:

\$2.30 per barrel f. o. b. the dock of f. o. b. the cars at the team track of any of the steam railroads,

\$2.35 per barrel in load lots, minimum of 15 barrels delivered anywhere within the following district:

On the West side of the river beginning at the North end of 16th street, extending South to Hall Street, and from 16th and Hall streets to the river. On the East side at a point commencing where Division Street would start from the river east to 12th street and North on 12th street to Russel, and west again on Russel street to where it would connect with the river. [640]

Both side of the streets above mentioned to be within the \$2.35 haul.

All other delivery points within the city limits of Portland to be \$2.45 per barrel delivered, minimum of not less than 15 barrels.”

The above schedule by the agreement aforementioned to control Oregon Portland Cement Company as to Portland, Oregon, business and business

outside of Portland, Oregon, within its allotted territory, should follow the above schedule with the additional cost of transportation and delivery from Portland, Oregon.

XXII.

That the reasonable, legitimate cost to Oregon Portland Cement Company of manufacturing cement and delivering the same at Portland, Oregon, is \$1.25 per barrel, to which should be added a legitimate profit of forty cents per barrel, and Oregon Portland Cement Company if not controlled by outside influence could profitably produce and deliver Portland cement of first class quality at \$1.65 per barrel, and at all times within the control of Oregon Portland Cement Company was surreptitiously obtained by the defendants herein, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, it was the contemplation to make the price of its cement not to exceed \$1.65 per barrel at Portland.

XXIII.

That in pursuance of said conspiracy of the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, Clark M. Moore has been empowered to act as the sales manager of Oregon Portland Cement Company and said Clark M. Moore at the same time is the sales manager and connected with the sales department of those companies controlled by the Cement Securities Company of Denver, [641] Colorado, including the Colorado Portland Cement Company, Union Portland Cement Company and Three Forks Portland Cement Company, and said Clark M. Moore, al-

though empowered to act for Oregon Portland Cement Company, in fact is acting on behalf of the combined defendants and is incompetent and disqualified to act as sales manager of Oregon Portland Cement Company; but the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, with full knowledge and really because of his affiliations with the other defendants keep and retain said Clark M. Moore as sales manager, and unless restrained and enjoined by this Court will continue to keep and retain him as sales manager, and that said Clark M. Moore through his control of the sales of the various companies is the nucleus and foundation for the absolute control of the prices; and recently said Clark M. Moore at San Francisco participated in a conference between the agents of the defendants incorporated in California and finally perfected and rounded out the schedule hereinbefore mentioned, and upon his arrival at Portland, Oregon, he then held conferences with one Irwin representing the International Portland Cement Company and one Rogers representing the Lehigh Portland Cement Company, and one Short representing Three Forks Portland Cement Company; and said Clark M. Moore in furtherance of the conspiracy has adopted a policy of refusing to quote prices at Seattle, Washington, or other outside points without communicating with some of the other defendants, except Andrew G. Smith, Paul C. Bates and J. G. Wilson, to obtain their latest advices and directions of the price at which they desire him to make quotations. [642]

XXIV.

That George McDonald and L. C. Newlands were installed in authority as hereinbefore set out by R. P. Butchart, and said McDonald and Newlands are old employees of said R. P. Butchart and of the Vancouver Portland Cement Company, imported to the plant of the Oregon Portland Cement Company for the purpose of carrying out the directions of said Butchart in the conspiracy hereinbefore mentioned.

XXV.

That Vancouver Portland Cement Company hereinbefore referred to in connection with said Butchart is a company having its principal place of business at Victoria, British Columbia, Dominion of Canada, and is in combination with all the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, to the extent that it absolutely refrains from competing in the cement business south of the international line, although there is no duty upon its cement and no geographical or natural reason why it should not compete, and the other defendants herein mentioned, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, although logically competitors, do not solicit business or ship cement into Canada,

XXVI.

That at twelve o'clock noon on Saturday, June 10, 1915, said defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson will, unless restrained by this Honorable Court, meet and amend the by-laws of Oregon Portland Cement Company,

by eliminating and doing away with the executive committee, and by placing the entire authority with entire power of said company in the hands of said R. P. Butchart, L. C. Newlands, George McDonald and Clark M. Moore, and will amend [643] the by-laws to eliminate Paul C. Bates and Aman Moore as vice-presidents by abolishing the offices of vice-president, and remove Aman Moore as treasurer of Oregon Portland Cement Company, so that no person except those selected by said R. P. Butchart shall have any detailed knowledge of the business of Oregon Portland Cement Company; and if these steps are taken the Oregon Portland Cement Company, Aman Moore and all other stockholders who are not participating in the combination will be irreparably damaged and injured, in that all the dealers and consumers interested in Portland cement will immediately know that Oregon Portland Cement Company has succumbed to the attacks of and is under the control of the allied cement interests, and the business of said Oregon Portland Cement Company will thereby be ruined; that Aman Moore is the largest stockholder of Oregon Portland Cement Company, owning \$135,700 par value of the preferred stock and \$93,200 of the common stock of Oregon Portland Cement Company, and there are stockholders not interested with R. P. Butchart or the other defendants who own approximately two-thirds of the entire issued stock of Oregon Portland Cement Company, and the acts herein complained of on the part of all the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson,

are unknown to said stockholders, and the interests of said stockholders will be irreparably damaged if the meeting scheduled for June 10, 1916, is by this Court allowed to be held; that the stockholders of Oregon Portland Cement Company are as follows:

	STOCK	
	Pref. Com.	
J. C. Ainsworth, First Nat. Bank, Portland, Ore.	54	40
Paul C. Bates, Yeon Bldg., Portland, Oregon	12	12
Oscar Beck, City Engineer's Office, Portland, Or.	5	2
[644]		
G. A. Bolderick, Forest Grove, Oregon	10	5
F. G. Baum, 1901-2 Hobart Bldg., San Francisco, Cal.	26	13
Mrs. M. Butrick, Portland, Oregon	10	5
Minnie Baber, Forest Grove	5	2
J. H. Booth, Douglas Natl. Bank, Roseburg, Ore.	50	20
J. S. Beckwith, Pendleton, Oregon	1	
Wm. W. Bierdneau, 2130 Corbett St., Baker, Ore.	10	5
F. S. Bonfils, Denver Post, Denver, Colorado	95	40
W. S. Berger, 249 Taylor St., Portland, Oregon	5	2
C. Boettcher, Colorado Portland Cement Co., Denver, Colorado	95	40
Edw. Est. Biddle, Dallas, Oregon	4	2

STOCK
Pref. Com.

Alice Winder Bradford, Capital Ave., Salt Lake City, Utah	2	
R. P. Butchart, Vancouver Portland Ce- ment Co., Victoria, B. C.	957	889
D. M. Butchart, Owens Sound, Ont.	318	250
A. S. Butchart, 20 Dale Ave., Toronto, Ont.	218	150
W. F. Burrell, 2501½ Third St., Port- land, Oregon	32	17
S. L. Brown, 663 Stark St., Portland, Oregon	10	5
O. C. Beebe, Zion Savings Bank, Salt Lake City, Utah	5	
M. J. Ballard, 264 East 25th St., Port- land, Ore.	2	
H. J. Biddle, Columbia Contract Co., Portland, Ore.	5	
Serge F. Balliff, Logan, Utah	2	
W. L. Buckner, No. 8 Eighth St., Port- land, Ore.	5	
M. J. Buckley, Wells Fargo Bldg., Port- land, Ore.	2	
Chas. S. Burton, Utah State Bank, Salt Lake City, Utah	3	
Jno. E. Blunt, Oregon Portland Cement Co., Oswego, Oregon	6	6
M. F. Brady, Yeon Building, Portland, Ore.	1	1
A. A. Burnard, Los Angeles, Cal.	111	111

STOCK
Pref. Com.

Ruby K. Crain, 594 East Morrison St., Portland, Ore.	5	2
U. S. Carpenter, 1325 5th St., Baker, Ore.	10	5
Sidney Hauam Carleson, 469 Salmon St., Portland, Ore.	21	10
[645]		
Virginia L. Cox, 1657 Bellene Ave., Seattle, Wash.	15	7
N. D. Crofutt, Box 445 Lynn Haven, Fla.	5	2
H. P. Clark, 607 So. Hall St., Los Ange- les, Cal.	56	29
D. B. Clarke, City Hall, Portland, Ore- gon	10	5
Gertrude Winder Cannon, Raymond, Alta, Canada	2	
Theressa Colvin, Colfax, Wash.	5	2
W. W. Cotton, Wells Fargo Bldg., Port- land, Ore.	53	40
T. R. Cutler, Salt Lake City, Utah	2	
John F. Champion, Equitable Bldg., Denver, Col.	95	40
Jno. C. Cutler, Jr., Salt Lake City, Utah	2	
C. C. Conkle, 840 Linden Ave., Long Beach, Cal.	47	20
Cement Securities Co., Ideal Bldg., Den- ver, Colorado	589	589
Geo. A. Cox Estate, Canada Life Bldg., Toronto, Ont.	60	60

STOCK

Pref. Com.

Cement Emp. Co-op. Assn., Oswego, Oregon	10	10
Churchill Hardware Co., Roseburg, Ore- gon	2	2
Douglas Natl. Bank, Roseburg, Oregon	240	240
R. L. Donald, Failing Bldg., Portland, Ore.	5	2
Clyde C. Dawson, First Natl. Bldg., Denver, Col.	47	20
Deseret News, Salt Lake City, Utah	5	
A. H. Devers, Clossett & Devers, Port- land, Ore.	12	12
Dallas Lumber & Log Co., Dallas, Ore.	3	3
Robert S. Edwards, 3d & Bancroft Way, Berkeley, Cal.	19	8
T. C. Elliott, Walla Walla, Washington	20	10
James Ewart, Roseburg, Oregon	15	7
E. N. Ewart, Roseburg, Oregon	15	8
Edward & Laselle, Railway Ex. Bldg., Portland, Ore.	1	1
F. O. Finkle, 448 H. W. Hellman Bldg., Los Angeles, Cal.	51	29
A. H. Fleming, Pasadena, Cal.	57	29
D. B. Fleck, 4512 42d Ave., SE. Port- land, Ore.	11	8
[646]		
F. I. Fuller, Electric Bldg., Portland, Ore.	50	27
First Natl. Bank of Whiting, Ind., Whiting, Ind.	5	2

STOCK
Pref. Com.

Jos. Goohegan, Salt Lake City, Utah ..	5	
W. A. Gordon, Portland, Oregon	5	
George E. Good, La Grande, Oregon ..	10	5
Grand Canyon L. & C. Co., Ariz., Foot of Commercial St., Los Angeles, Cal. ..	95	40
Nellie E. Grant, Dallas, Oregon	10	5
U. S. Grant, Dallas, Oregon	10	45
L. D. Gilbert, 704-5 L. W. Hellman Bldg., Los Angeles, Cal.	53	41
R. C. Gillis, 1023 Investment Bldg., Los Angeles, Cal.	56	29
E. V. Hoover, Review Bldg., Roseberg, Oreg.	5	2
F. B. Houghton, 80 East Jackson Blvd., Chicago, Ill.	23	10
Matilda Winder Hamilton, Riverton, Utah	2	
W. R. Harris, Panama City, Florida..	30	15
James Hobbs, Logan, Utah	5	2
Howard Company, First Market St., Oakland, Cal.	30	
The Jno. L. Howard Est., 87 Vernon St., Oakland, Cal.	24	24
Howard Commercial Co., Oakland, Cal.	160	80
R. A. Hines, Canyon City, Oregon	15	7
Mark Hayter, Dallas, Oregon	10	5
Margaret V. Haytor, Dallas, Oregon..	5	2
Oscar Haytor, Dallas, Oregon	11	8
B. S. Huntington, 805-7 Lewis Bldg., Portland, Ore.	10	5

STOCK

Pref. Com.

O. O. Hall, 474 Gilsan St., Portland, Ore.	10	5
W. P. Hardesty, City Engineer's Office Portland, Ore.	10	5
N. P. Haninger, 1897 Peninsular Ave., Portland, Ore.	12	5
E. J. Hunt, Alameda, Cal.	43	10
W. B. Hunt, Alameda, Cal.	16	
Investors Bldg. & T. Co., 407 Yeon Bldg. Portland, Ore.	10	5
Harry C. James, Denver, Natl. Bank, Denver, Col.	47	20
Robert U. Jacob, San Francisco, Cal. ..	10	5
[647]		
C. S. Jackson, Oregon Journal, Port- land, Ore.	12	12
Mrs. A. C. Kidd & Son, Roseburg, Ore- gon	5	2
Leora E. Klahr, 539 Lincoln St., Walla Walla, Wash.	5	2
F. A. Kiehle, Corbett Bldg., Portland, Ore.	10	5
W. J. Kerr, O. A. C. Corvallis, Ore. ..	99	96
C. Leonardt, H. W. Hellman Bldg., Los Angeles, Cal.	214	104
H. C. Leonardt, 321 Goodnaugh Bldg., Portland, Ore.	160	95
Geo. Lawrence, Jr., Geo. Lawrence Co., Portland, Ore.	5	
L. Lovinger, Baker, Oregon	10	5

STOCK
Pref. Com.

A. L. Lucas, 101½ E. 14th St., Portland, Ore.	5	2
M. J. Larson	5	2
Clementine F. Lewis, Est., Allen & Lewis, Portland, Ore.	15	
S. Loughridge, Grants Pass, Ore.	3	
Carroll A. Low, Oregon Portland Ce- ment Co., Roseburg, Oregon	1	1
W. C. McKewan, 51½ So. First St., Walla Walla, Wash.	5	2
Henry McKewan, Utah State Bank, Salt Lake City, Utah	1	
Elliott McAllister, 14 Montgomery St., San Francisco, Cal.	37	23
Geo. Macdonald, Oswego, Oregon	6	6
Wirt Minor, Spaulding Bldg., Port- land, Ore.	3	3
Aman Moore, Oswego, Ore.	1357	932
Chas. C. Moore & Co., Sheldon Bldg., San Francisco, Cal.	23	10
Chester C. Moore, Medical Bldg., Port- land, Ore.	29	19
Ella Winder McKay, Calder Station, Salt Lake City, Utah	2	
Anna J. Miller, 2458 So. 7th St., E. Salt Lake City, Utah	2	
A. L. Mills, 1st National Bank, Port- land, Ore.	84	44
J. J. Murphy, Wallowa, Oregon	5	2

STOCK
Pref. Com.

J. E. Murphy, 26 Adelaide St. W., Toronto, Ont.	60	60
A. C. Marsters, Roseburg, Oregon	10	5
R. W. Marsters, Roseburg, Oregon	5	5
Jennie Muldrick Estate, Canyon City, Oregon	5	2
[648]		
W. A. Mitchell, Colfax, Wash.	15	7
J. R. Mason & Co., Merchants Exeg. Bldg., San Francisco, Cal.	54	27
Seeley W. Mudd, 1208 Hollingsworth Bldg., Los Angeles, Cal.	354	354
Julius L. Meier, Meier & Frank Co., Portland, Ore.	20	10
Reece-Gottfried Co., 67 Front St., Portland, Ore.	4	4
Nicholai-Neppach Co., 227 Davis St., Portland, Ore.	10	5
Martin Nelson, 457 So. Baker St., Baker, Ore.	5	2
C. W. Nibley, Bishops Bldg., Salt Lake City, Utah	53	17
Jos. F. Nibley, Salt Lake City, Utah...	10	
Alice Nibley, 444 E. 18th St., No. Port- land, Ore.	5	
Alex Nibley, Tr., 444 E. 18th St., No. Portland, Ore.	9	
William Nicolai, 227 Davis St., Port- land, Ore.	12	12
Oregon Iron & Steel Co., 500 Con- cord Bldg., Portland, Ore.	248	248

STOCK
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Pacific States Fire Ins. Co., Chamber of Commerce Bldg., Portland, Ore.	10	5
J. P. Penn, Box 85 Salem, Ore.	25	12
Fred Phillipin, Canby, Oregon	10	5
Mrs. F. A. Rogers, Forest Grove, Ore.	10	5
J. R. Rogers, 90 First St., Portland, Ore.	5	2
D. J. Riley, Dallas, Oregon	10	5
J. L. Riggs, Salem, Oregon	5	2
Charles E. Roberts, Roseburg, Oregon	15	7
George F. Richards, 1010 Third Ave., Salt Lake City, Utah	13	5
La Grande Richards, Amsterdam, Hol- land	10	5
W. A. Rossiter Est., Zion Savings Bank, Salt Lake City, Utah	5	
J. P. Rassmusson, 2d & Taylor St., Portland, Ore.	17	14
Tom Richardson	3	
George Ramsey Lbr. Co., Salt Lake City, Utah	5	
George Ramsey, Salt Lake City, Utah	5	
Joseph F. Smith, Salt Lake City, Utah	1	
Victor C. Smith, San Bernardino, Cal.	47	20
Cecil B. Smith Est., 10 Adelaide St., East Toronto, Ont.	47	20
[649]		
Andrew C. Smith, Medical Bldg., Port- land, Ore.	213	158

	STOCK	
	Pref. Com.	
Mrs. M. J. Buick Sewell, Roseburg, Oregon	20	10
C. J. Sutherland, Wells Fargo Bldg., Portland, Ore.	3	
Stockgrowers and Farmers National Bank, Wallowa, Ore.	5	2
John J. Scharer	50	25
T. W. Sullivan, 101 10th St., Oregon City, Ore.	28	13
Dennis Sullivan Est., Denver Natl. Bank, Denver, Colorado	47	20
F. F. Seeley Est., Willsonville, Oregon	10	5
Charles H. Stranahan, Hood River, Oregon	10	5
J. H. Schaeffer, Roseburg, Oregon	10	5
Margaret Stephenson, Box 603, Forest Grove, Oregon	25	12
B. T. Soden, 629 East 10th St., No. Portland, Oregon	5	2
S. H. Sheldon, 595½ First St., Port- land, Ore.	10	5
Jennie Strickler, Colfax, Washington..	10	5
Jas. B. Schuyler Est., Santa Monica, California	47	20
Oscar Seley, Baker, Oregon	5	2
E. Stenger, St. Joe & G. I. Ry. Co., St. Joe, Mo.	23	10
Mary A. Winder Steadman, Riverton, Utah	2	

STOCK
Pref. Com.

Teal & Minor, Spaulding Bldg., Portland, Ore.	28	24
Teal, Minor & Winfree, Spaulding Bldg., Portland, Ore.	14	14
J. H. Teel, Trustee, Spaulding Bldg., Portland, Ore.	12	12
D. H. Turner, Box 212, McMinnville, Ore.	5	2
Geo. F. Taplin, Forest Grove, Oregon	20	10
F. B. Trask, 616 Union Oil Bldg., Los Angeles, Cal.	47	20
E. L. Thompson, Hartman & Thompson, Portland, Oregon	2	
P. A. Vale, Royal Bank of Canada, Toronto, Ont.	40	40
Vulcan Iron Works, Wilkesbarre, Pa.	25	25
John P. Vollmar, First Natl. Bank, Lewiston, Idaho	20	10
J. C. Westergard, Oswego, Oregon	25	10
W. C. Winder and Ruben G. Miller, Trustees, 403 E. 13th St., So., Salt Lake City, Utah	1	10
[650]		
Richard Winder, 92 J. Street, Salt Lake City, Utah	2	
Edwin J. Winder, 403 E. 15th St. S., Salt Lake City, Utah	2	
William C. Winder, 403 E. 15th St. S., Salt Lake City, Utah	2	

STOCK
Pref. Com.

Rex Winder, 403 E. 15th St., So., Salt Lake City, Utah	2	
Luella Winder, 2458 S. 7th St., Salt Lake City, Utah	2	
W. H. Wilcox, Prairie City, Oregon ..	65	
T. B. Wilcox, Wilcox Bldg., Portland, Oregon	165	138
A. J. Wilson, Dallas, Oregon	10	5
A. King Wilson, Chamber of Commerce, Portland, Oregon	5	2
Margaret Wilkinson, Logan, Utah	10	5
F. G. Wilkinson, Logan, Utah	10	5
Thos. Whitehorn, Corvallis, Oregon ..	5	2
Arthur Winter, Salt Lake City, Utah	5	
E. L. Warren, S. 211 Pine St., Spokane, Wash.	85	42
A. H. Woodruff, Care 3 C. M. I., Salt Lake City, Utah	2	
D. C. Williamson, Oswego, Oregon	15	8
H. G. Whitney, Salt Lake City, Utah, c/o Deseret News	5	
I. N. Woods, Portland, Oregon	15	7
T. W. Younger, Care S. P. Co., Sacramento, Cal.	25	2
S. A. Whitney, Salt Lake City, Utah..	5	

[651]

And Aman Moore now offers to allow any stockholder of Oregon Portland Cement Company to join him as plaintiff in this suit, and is maintaining the same on behalf of himself, Oregon Portland

Cement Company and any stockholder similarly situated.

XXVII.

That the stockholders of Oregon Portland Cement Company are scattered throughout the various states of the Union, and it would be impossible in less than six months to obtain their attendance or proxies at a special meeting of the stockholders, and the annual meeting of stockholders is fixed by the by-laws in the second week of January of 1917, and Aman Moore has attempted through the directors of Oregon Portland Cement Company to prevail upon them not to take the action hereinbefore complained of and not to form a combination and to conduct themselves legally, but that said efforts and attempts are unavailing, and unless enjoined by this Honorable Court Aman Moore and all other stockholders similarly situated, and Oregon Portland Cement Company, will be unwillingly making themselves liable to prosecution under the laws of the United States and the laws of the State of Oregon and the ordinances of the City of Portland, and will be greatly damaged and injured in their reputation as well as the irreparable injury and damage to their interest in Oregon Portland Cement Company.

XXVIII.

That Oregon Portland Cement Company has now Portland cement on hand which should be sold and now has men actually working at its plant who must be paid, and now has a going business which must be attended to.

XXIX.

That except for relief obtained in this suit in equity plaintiffs are without any adequate remedy and have no remedy at law. [652]

WHEREFORE, plaintiffs pray:

First: That the defendants and all of the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, be restrained from holding any meeting of the directors of Oregon Portland Cement Company on June 10, 1916, or at any other time until further order of this Court;

Second: That the defendants and all of the defendants, except Andrew C. Smith, Paul C. Bates and J. G. Wilson, be restrained and enjoined from in anywise taking any step of any nature whatsoever towards an understanding or agreement between themselves or with any company producing or handling cement in anywise affecting the output of Oregon Portland Cement Company, or in anywise affecting the conduct with regard to the Portland Cement business of any officer or agent connected with Oregon Portland Cement Company.

Third: That R. P. Butchart be by mandatory injunction directed to perform no further act of any kind or nature whatsoever upon behalf of Oregon Portland Cement Company.

Fourth: That Clark M. Moore be by mandatory injunction directed to perform no further act of any kind or nature whatsoever upon behalf of Oregon Portland Cement Company;

Fifth: That L. C. Newlands be by mandatory injunction directed to perform no further act of any

kind or nature whatsoever upon behalf of Oregon Portland Cement Company.

Sixth: That George McDonald be by mandatory injunction directed to perform no further act of any kind or nature whatsoever upon behalf of Oregon Portland Cement Company.

Seventh: That, for the purpose of protection of the business of Oregon Portland Cement Company, until such time as the stockholders can be called together in a meeting, a receiver be placed in charge of the affairs and business of [653] Oregon Portland Cement Company with full power and authority to conduct and continue said business under an order of this Court, and plaintiffs respectfully suggest that Andrew C. Smith, Paul C. Bates and J. G. Wilson, together with Aman Moore, be appointed jointly as receivers under the orders of this Court and to report to this Court, to conduct the affairs of Oregon Portland Cement Company until the stockholders of said company can legally meet and preserve the existence of said company separate and apart from the trust;

Eighth: For such other and further relief as to the Court seems just and equitable.

Attorney for Plaintiffs.

State of Oregon,
County of Multnomah,—ss.

I, Aman Moore, being first duly sworn, depose and say that I am vice-president and treasurer of Oregon Portland Cement Company, one of the plaintiffs above named; that I am also a plaintiff above

named; that I have read the foregoing complaint and verily believe the facts, statements and allegations therein made to be true.

I Subscribed in my presence and sworn to before me this 9th day of June, 1916.

Notary Public for Oregon.

My commission expires —.

Filed December 23, 1920. G. H. Marsh, Clerk.
[654]

Defendants' Exhibit No. 7.

June 19, 1916.

Personal:

Mr. R. P. Butchart, President,
Oregon Portland Cement Company,
Tod's Inlet, British Columbia.

Dear Sir:

Recently I called your attention to the fact that the construction work on our factory since January first (the date on which the management of same was surrendered by me to Mr. Newlands, appointed by you superintendent) has been prosecuted in a very inefficient manner. While one or two single items of work completed prior to January first exceeded the engineer's estimates, all the work prosecuted previous to that date under my own supervision showed a reduction under the engineers' estimates. Subsequently to the time of surrendering

the work to Mr. Newlands Mr. Gilbert's estimates had been exceeded approximately \$91,000 and Mr. Cantine's had been exceeded approximately \$54,000. Of this amount fifteen to twenty thousand dollars might be accounted for legitimately. It is my opinion that the balance of this work was due to lax management by Mr. Newlands, as I do not believe that the labor has been prosecuted to exceed sixty per cent efficiency since the time that he took charge of the work. Since the factory started operating, about June first, the same inefficiency has continued. Instead of making 1000 barrels output there has been not to exceed 500 barrels of cement produced per day since the factory started. The kiln should average 1000 barrels per day running at its highest efficiency, and in my judgment 1200 barrels of klinkers per day. The raw grinding mills should easily produce enough slurry for 1200 barrels per day and the cement grinding mill should finish from 900 to 1000 per day minimum. [655]

There have been several expensive break-downs, and there seems to be no accurate records kept as to what is being produced from day to day.

I am calling your attention to this condition as President of the corporation as I do not believe that our company will pay expenses if it continues to operate in the present inefficient manner. I assume that you have all the stockholders' interests at heart and that matters will not be permitted to continue as at present any longer.

Very truly yours,

AM.s.

Filed December 23, 1920. G. H. Marsh, Clerk.
[656]

Defendants' Exhibit No. 8.

Oswego, Oregon, June 19, 1916.

Mr. Wirt Minor,
c/o Teal, Minor & Winfree,
Spaulding Building, Portland.

Dear Sir:

Referring to our conversation of yesterday, and your request for me to write you basis on which a reorganization of the board of directors of the Oregon Portland Cement Co. might be effected, satisfactorily to myself and those I represent, will say that in order to prevent the company from being involved in litigation, I am willing to co-operate in the selection of a new board along lines as follows:

1. Have the company's charter amended, reducing the number of directors from nine to seven.

2. Have all the present directors resign from the board except the following:

R. P. Butchart.

Aman Moore.

Andrew C. Smith.

Paul C. Bates.

3. Elect three new directors, including Mr. T. B. Wilcox or some representative to be named by him or the Ladd interests, excepting A. S. Patullo.

The remaining two members of the board should

be chosen from among the stockholders residing in Oregon.

Mr. J. H. Booth, Pres. of the Douglas Natl. Bank of Roseburg, who is the heaviest stockholder in Ore. excepting myself, would be acceptable to me as I presume to everyone else concerned.

The final member for the board to be chosen from the following list of Portland stockholders, to wit:

A. H. Devers.

F. I. Fuller. [657]

O. O. Hall.

Geo. Lawrence, Jr.

F. E. Beach.

J. R. Rogers.

J. P. Rasmussen.

— Neppach.

E. L. Thompson.

I have no preference regarding any of the above parties, in fact am scarcely acquainted with any one of them. These men are all representative business men of the city and I believe would all make impartial directors for our company.

I have not named either Mr. Boettcher or Mr. Leonardt of Cal. because these gentlemen would both be disqualified to serve on our board after Oct. 15th when latest amendments to the Sherman Law go into effect; as I understand the interlocking directorates of industrial corporations doing an interstate business will, after that date be prohibited by law.

Mr. Butchart at that time will also be disqualified to serve on our board, but he may have the privilege

of naming his own representatives upon his resignation.

Yours truly,

AMAN MOORE.

Filed December 23, 1920. G. H. Marsh, Clerk.
[658]

Defendants' Exhibit No. 9.

ALEXANDER & BALDWIN, LTD.

Of Honolulu, Ty., Hawaii.

Seattle, Wash., February 1, 1916.

Mehlhorn Bldg.

Messrs. Oregon Portland Cement Co.,

Oswego, Ore.

Gentlemen:

PORTLAND CEMENT.

We have for acknowledgment your favor of Jan. 27th, and are pleased to note that you will be in a position on or before April 1st to place your product on the market.

Our interests are entirely in the Hawaiian Islands, where there is as you are doubtless aware, a considerable market for cement which up to the present time has been dominated by San Francisco interests.

At times also, large shipments enter this territory from Hong Kong and the purpose of this letter is to find out whether you feel you are in a position to enter this field and meet the competition above referred to.

If so, we would like to further consult with you on the subject with a view to introducing this brand in Hawaii.

Although the American-Hawaiian S. S. Co. have commenced a direct service from Portland to the Hawaiian Islands, we believe it will be necessary to figure in cost of exporting this cement via Tacoma, as we are under the impression that the Portland service is not a permanent one.

Trusting to hear from you further on this business, we beg to remain,

Yours very truly,
ALEXANDER & BALDWIN, LTD.
By E. R. ADAMS,
Seattle, Manager. [659]

CBW/H.

February 2, 1916.

Alexander & Baldwin, Ltd.,
Melhorn Bldg.,
Seattle, Wash.

Gentlemen:

We have your communication of the 1st inst. and have noted the contents thereof with interest. We would be very glad to furnish our product in the Hawaiian market. It would be much better however, to make shipments direct from Portland, as our factory is along the Willamette River where the barging charge of not to exceed 3¢ will deliver cement alongside of ships in the Portland harbor.

We should be able to compete with any other plant manufacturing on the Pacific Coast, for ship-

ments into the Hawaiian territory, providing shipments can be made direct from Portland. If however, we should be compelled to ship by rail to Tacoma, we would be greatly handicapped on account of the extra freight rate of 32¢ per barrel to that point as against 19¢ per barrel from factories of the Northern Washington Companies.

We have just been advised that the union Steamship Co. of Victoria, B. C. is intending to establish a direct line to Australia from Portland, touching points on the Hawaiian Islands. We have taken up with these people, the matter of making shipments of our product to Honolulu. We will be very pleased to hear from you further, and to be advised as to the present prices at which Portland Cement is being sold in the Hawaiian Islands, and what competition we would have to meet in order to do business in that territory.

Again thanking you for your communication, and trusting that we may be able to do some business with your company, we remain,

Very truly yours,

OREGON PORTLAND CEMENT COMPANY.

Vice-President & Treasurer.

M-W. [660]

ALEXANDER & BALDWIN, LTD.

Of Honolulu, Ty., Hawaii.

Seattle, Washington, Feb. 7, 1916.

Mehlhorn Bldg.

Messrs. Oregon Portland Cement Co.,

Oswego, Ore.,

Gentlemen:

CEMENT.

We have for acknowledgement your favor of the 2d inst. contents of which have been duly noted.

In respect to the Union Steamship line from Portland, would advise that since this line is under the British flag, they would not be permitted to carry merchandise from Portland to the Hawaiian Islands, being prohibited by the U. S. Coastwise laws which permits only American bottoms to enter into this trade.

Regarding price, believe California plants are quoting to-day in the neighborhood of \$1.65 per barrel, less 1% F. O. B. Steamer, San Francisco, allowing a refund of 10 cents for each sack, returned in good order.

This makes their basis approximately \$1.25 less 1% F. O. B. Steamer, San Francisco.

We have now in our hands, an inquiry from the Kahului Railroad Co. which we represent for 20,000 barrels cement to be put up in wooden barrels lined with waterproof paper to weigh approximately 200 lbs. gross.

You probably have not figured on this form of container, but would say for your information that the California plants have recently equipped them-

selves to put up cement in this manner and are figuring on this business.

We would suggest that by conferring with the Western Cooperage Co. you might be able to do likewise and would appreciate [661] your making us a quotation F. O. B. American-Hawaiian steamer Portland, finding out from the Agent of that line whether they will have a service out of Portland to the Islands after April, when we understand your plant will be in operation, or preferably a C. I. F. price Kahului (F. A. S. Ship's tackles Kahului).

The present freight rate from Puget Sound to Hawaiian Island Ports is \$2.75 per ton of 2000 lbs. and we believe you will find the American-Hawaiian S. S. Co. will quote the same tariff from Portland.

Cement must be guaranteed to pass Hunt's inspection and quotations should figure in this cost of testing.

This order for 2000 tons will no doubt be placed within the next ten days.

In any case, we will keep in touch with you on future business and trust conditions will permit of our placing some orders in your hands.

Yours very truly,

ALEXANDER & BALDWIN, LTD.

By C. B. WARREN,

For Seattle Manager.

CBW/H. [662]

Feb. 9, 1916.

Alexander & Baldwin,
Mehlhorn Bldg.,
Seattle, Wash.

Gentlemen:

Yours of the 7th inst. received and carefully noted. The prices of \$1.25 per barrel F. O. B. Steamer Portland, would not be attractive to us at this time, although we might be able to consider selling at such a low price later on if we find that we are not able to market our output locally.

If the trade in the Hawaiian Islands would demand a wooden barrel containing 200 pounds gross, and if we should decide to enter that market, we would of course, arrange to supply the kind of packages required. We expect to have a representative in your city within the next 60 days, at which time, we will be glad to take the matter up with you further.

Thanking you for your inquiry, we remain,

Very truly yours,

OREGON PORTLAND CEMENT COMPANY,

M-W.

Vice-President & Treasurer.

Filed December 23, 1920. G. H. Marsh, Clerk.

[663]

Defendants' Exhibit No. 10.

Mr. George Macdonald, Secretary,
Oregon Portland Cement Company,
Portland, Oregon.

Dear Sir:

In the absence of R. P. Butchart, President of the Oregon Portland Cement Company, I, as Vice-President of said corporation, do hereby request you to call a special meeting of the directors of said corporation to be held at the office of the corporation in the Wilcox Building in Portland, Oregon, on Monday the 28th day of August, 1916, at two o'clock P. M.

The business to be transacted at such meeting and which must be stated in your call shall be as follows:

First: To obtain the various data from R. P. Butchart, L. C. Newlands, George Macdonald, Clark M. Moore and M. J. Ballard in relation to an agreement made by Clark M. Moore with Pacific Portland Cement Company, Standard Portland Cement Company, Santa Cruz Portland Cement Company, Henry Cowell Lime & Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company and Colorado Portland Cement Company that the product of our plant should be sold in accordance with the following schedule:

“To Dealers:

\$2.30 per barrel gross f. o. b. the cars on the terminal team track of any of the steam railroads, or f. o. b. cars at the dealers warehouse spur buying the cement. Or ex-dock.

\$2.35 per barrel gross f. o. b. any other spur within the city limits of Portland.

Less 10¢ per barrel dealers commission.

“To Consumers:

\$2.30 per barrel f. o. b. the dock or f. o. b. the [664] cars at the team track of any of the steam railroads.

\$2.35 per barrel in load lots, minimum of 15 barrels delivered anywhere within the following district:

On the west side of the river beginning at the north end of 16th street, extending south to Hall Street, and from 16th and Hall Streets to the river. On the east side at a point commencing where Division Street would start from the river east to 12th street, and north on 12th street to Russell, and west again on Russell Street to where it would connect with the river.

Both sides of the street above mentioned to be within the \$2.35 haul.

All other delivery points within the city limits of Portland to be \$2.45 per barrel delivered, minimum of not less than 15 barrels.”

The said agreement providing that the above schedule would apply as to business in Portland, Oregon, and as to business outside of Portland, Oregon, except as limited as hereinafter stated, the schedule should apply with the addition thereto of the cost of transportation and delivery from Portland, Oregon; that about the same time that the agreement hereinbefore set out was made the said Clark M. Moore entered into an agreement with the

Vancouver Portland Cement Company of Victoria, B. C., Olympic Portland Cement Company, Superior Portland Cement Company, Washington Portland Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company and Colorado Portland Cement Company, providing that our product should not be sold beyond the Columbia River, and as a means of preventing the sale of our product, agreed that we should quote only when inquiries were made and at a higher price than other cement companies quoted on the other side of said river, and that our company make no attempt to solicit [665] business beyond the Columbia River in Washington; that this agreement extended to the territory to the north of the Columbia River to points east of Pasco, Washington; and the said Clark M. Moore made a further agreement with the International Portland Cement Company, Lehigh Portland Cement Company, Three Forks Portland Cement Company, Union Portland Cement Company and Colorado Portland Cement Company to the effect that our product be not sold to points further east than Umatilla and only at points west of said town, including branch lines of the O. W. R. & N., and the Oregon Trunk entering Central Oregon; and to points east of Umatilla our company under said agreement, was not to solicit business and was to quote only when inquiries were received by us at a price satisfactory to the other cement companies; and commencing in 1911 the allied cement interests in the Pacific Coast states commenced a series of attacks upon the plant which

is now our property and continued the same during *the* until our present reorganized company was incorporated, and from the time of incorporation of our present company to the present time.

Second: To consider and pass upon a resolution which I shall offer at said meeting, a copy of which is hereto attached marked "Exhibit 1."

Third: To consider and pass upon a resolution which I shall offer at said meeting, a copy of which is hereto attached marked "Exhibit 2."

Fourth: To consider and pass upon a resolution which I shall offer at said meeting, a copy of which is hereto attached marked "Exhibit 3."

Dated at Portland, Oregon, this 14th day of August, 1916.

AMAN MOORE,
Vice-President Oregon Portland Cement Com-
pany. [666]

EXHIBIT No. 1.

WHEREAS, at the meeting held upon the 17th day of July, 1916, by this body, certain reports with regard to the condition of the Company, etc., were made verbally or by written memoranda, and

WHEREAS, Mr. Newlands read a certain letter from one Mr. Gilbert, and Whereas, no record was preserved of the same or of the reports made at said meeting, and

WHEREAS, Aman Moore has previously made protest against the present conduct of the Company,

THEREFORE, BE IT RESOLVED, that a written record in detail in the minutes of this body be made, covering all reports submitted to or consid-

ered by this board; also that a copy of the Gilbert letter presented by the Superintendent, Mr. Newlands, be secured and held in the files by the Secretary, with copy supplied to each director, and that in the future the reports of all agents, directors, officers, or employees be in writing and made a part of the record of the minutes of the meetings of this board; and that at all meetings a copy of any such reports or matters to so be reported, shall be delivered to each director, and that no matter be presented to come before the Board or be acted upon by the Board unless the same is in writing, accompanied by the copies herein mentioned.

Respectfully submitted, [667]

EXHIBIT No. 2.

Portland, Oregon, July 20, 1916.

To the Board of Directors of the Oregon Portland Cement Company:

WHEREAS, the company's factory at Oswego is able to manufacture one thousand barrels of cement per day, and whereas the shipments for the month of June were only 6931 barrels and for the first thirteen days of July were only 2185 barrels; and whereas, at the present time the company's cement storage bins are full, the klinker storage bins are also filled and several thousand barrels of klinker have been piled out in the open; and

WHEREAS, one of the chief causes for this lack of shipment is due to the fact that our sales manager is trying to serve two or three masters; that he is also sales manager for a factory in Colorado, one in Utah, and one in Montana, therefore rendering

it impossible for him to spend more than a few days in the month in the State of Oregon; and whereas, the sales manager, in co-operation with the president of our company, has made certain price agreements and has entered into certain unlawful agreements with our competitors restricting our territory to Central and Western Oregon only; and whereas, in spite of the fact that our own sales territory has been restricted, we are compelled to divide the business in this restricted territory with four plants in California; and whereas, the total market in this territory would be required to market our output; and whereas, our freight rates to certain territory covering all of Southwestern Washington, including the city of Olympia, and all points south, are the same as our competitors, [668] and the distance of this territory is less from our plant at Oswego than from the plants of our competitors, which would in justice to our company make it imperative for the railroad companies to grant us a less rate to points in this territory than our competitors now have, and

WHEREAS, all the territory in Eastern Oregon along the points of the O.-W. R. & N. Company's railroad to and including Huntington, Oregon, and to points as far east as Mountain Home, Idaho, are equi-distant, or a less distance from plants in Spokane, Washington, and points in Utah; and whereas, our freight rates to all points from the Deschutes River to Huntington, Oregon, and points intervening, are the same as our nearest competitors, the International Portland Cement Com-

pany, of Spokane, Washington; and whereas, there is no legitimate or business reason why we should not sell cement in the State of California, at least in equal quantity to the sales of the California companies in the State of Oregon:

NOW, THEREFORE, BE IT RESOLVED, that the present sales manager of our company be forthwith asked to resign; also that the president of our company, and all his appointed agents who are now directing the management of our company, shall be asked to resign immediately, since the president is a director of a competing company, in British Columbia and a heavy stockholder in the Washington Portland Cement Company, another competitor; and that all agreements that have been entered into by the president or the sales manager, or both, on behalf of our company, whereby our territory has been restricted, and price agreements have been made with our competitors, shall be forthwith and immediately rescinded and repudiated by our company, and that new officers be elected who will serve but one master, to-wit; the Oregon Portland Cement Company, and [669] who shall exercise an unrestricted right and policy to dispose of the output of our factory at prevailing market prices at points in Oregon, Washington and California, or at the best obtainable prices which will be high enough to insure good dividends to the stockholders of our company and not be unreasonably high or of a monopolistic character.

And that the Directors of the Company, as follows: Wirt Minor, M. J. Ballard, L. C. Newlands,

Wm. Johnson and R. P. Butchart, because of their affiliations or small stock holdings, resign from this Board of Directors.

Respectfully submitted, [670]

EXHIBIT No. 3.

WHEREAS, the Secretary of this Company, Mr. George MacDonald, and the Superintendent, Mr. L. C. Newlands, have under date of June 15, 1916 and June 23, 1916, sent out certain letters to the stockholders of the Company attacking the personal integrity of the Vice-President and Treasurer of the Company, Mr. Aman Moore, and

WHEREAS, the letter under date of June 15, 1916, was written on the stationery of the Oregon-Portland Cement Company and signed by the Cement Company with the above mentioned Newland's and MacDonald's typewritten signatures following the name of the Cement Company as officers, and

WHEREAS, the letter under date of June 23, 1916, was also sent out under the heading of the Oregon-Portland Cement Company, and Whereas these letters were gotten out by the stenographers and employees of the Cement Company and all expenses in connection therewith were paid by the Cement Company, and

WHEREAS, said letter dated June 15, 1916, contained the following clause, to wit:

"Mr. Moore, through many acts which had shown extravagance and want of foresight, lost the confidence of your Board of Directors early in this year."

And, WHEREAS, said letter dated June 15, 1916, also states the following:

“Since this time Mr. Moore has expended a great deal of the company’s money (over four thousand dollars) directly against the express instructions of the President. He has also made at least one contract which may involve the Company in expensive litigation.” [671]

And, WHEREAS, under date of June 16, 1916, a copy of the letter addressed to Montague O’Reilly, signed by the said Aman Moore, was forwarded to our stockholders, also an additional letter containing the following paragraph was contained therein:

“A very large sum is involved in this contract, which only came to light on June 14th, and long after the contractors had taken the job at a low figure. Also please note this pavement is not to be constructed with cement, but of competitors material, so that we had no prospects of gain or profits by the transaction.”

And, WHEREAS, under date of June 23, 1916, in a circular letter, additional statement by the said MacDonald and Newlands was made as follows:

“To obtain this money, he sold your locomotive, steel rails, office furniture, cement, sand, gravel, etc.”

And, WHEREAS, all of the above statements are libelous, false and untrue, and having been signed by the officers of the Company, would make the Company liable for damages to the said Aman Moore, and

WHEREAS, the said MacDonald, as Secretary of the Company, delivered a statement to the Board of Directors at their last meeting, which statement was dated June 30, 1916, containing an item under heading as follows:

“Aman Moore Paving Company—\$6,546.72.”

And, WHEREAS, such item is not properly charged on the books, as any amount expended in the paving propaganda should have been properly charged to the advertising department of the sales department, and

WHEREAS, under date of June 22, 1916, there appeared in the Oregon City Enterprise, Oregonian, the Daily Bulletin, [672] and other newspapers in the City of Portland, the following article to wit:

**“CEMENT COMPANY WILL MOVE OFFICES
TO PORTLAND.**

“Melvin J. Ballard, Vice President and director of the Oregon Portland Cement Company, has been appointed the company’s acting vice-president and hereafter the management of the company will be under his jurisdiction. Originally the main office was at Oswego, but the officer in charge of the company’s affairs have likewise been transferred to Portland. The following are the company’s active officers: Melvin J. Ballard, vice-president; George MacDonald, secretary; Clark M. Moore, general sales manager; L. C. Newlands, general superintendent and director in charge of operations, having supervision over the plant, quarries and

railroad properties of the company. Mr. Newlands makes his headquarters at Oswego and is the only active officer there,"

which must have been written, inspired or dictated by either the said MacDonald, Secretary, or the said Newlands, Superintendent, or both of them.

THEREFORE, BE IT RESOLVED:

First: That the said MacDonald and Newlands be and are hereby requested to send no further communications of any kind to the stockholders except by the express authorization and request of the Board of Directors.

Second: That this company repudiate the above-mentioned letters and all responsibility of the same so far as the company is concerned; and that hereafter, if the said MacDonald and Newlands desire to wage a political campaign among the stockholders to secure proxies or for other purposes that may [673] appear to be of political nature, that they do the same under their own names instead of the name of the Company, and that the expenses of such campaign be paid by the said MacDonald and Newlands personally.

Third: That all expenses for sending out the above letters mentioned to the stockholders, shall be paid back to company by the said MacDonald and Newlands.

Fourth: That the said MacDonald and Newlands be requested to make specific charges as pertaining to their complaint Number 1, wherein they stated that Mr. Moore had been extravagant in the execution of the construction work under his management

during the months of October 1st to January 1st last; that they be requested to place in writing before this Board all specific instances of such extravagances charged against Mr. Moore.

Fifth: BE IT FURTHER RESOLVED, that the said MacDonald and Newlands produce evidence to show that any money expended by said Moore in waging an educational propaganda in connection with paving materials was "directly against expressed instructions of the President."

Sixth: BE IT FURTHER RESOLVED, that the said Secretary be instructed to write the stockholders, advising them of the fact that this Board of Directors have today unanimously ratified the contract entered into by Mr. Moore on behalf of this Company with the Montague O'Reilly Company in connection with the paving contract and for the express purpose of testing the legality of the patents of the "Warren" people.

Seventh: BE IT FURTHER RESOLVED, that the said MacDonald, Secretary, and Newlands, Superintendent, be requested to write a letter to the stockholders of the Company, acknowledging [674] their mistake when they stated the following:

"To obtain this money, he sold your locomotive, steel rails, office furniture, cement, sand, gravel, etc."

Eighth: BE IT FURTHER RESOLVED, that the said MacDonald be requested to furnish this Board a detailed statement of the item of \$6,546.72, appearing in the statement rendered to the Board

at its last meeting and dated June 30, 1916, under the following heading:

“Aman Moore Paving Company—\$6,546.72.”

And, BE IT FURTHER RESOLVED, that the said MacDonald, as Secretary of this company, be instructed to place this item under the proper heading of *advertising* in the sales department since there never has been an Aman Moore Paving Company, and such item has evidently been so listed by MacDonald to embarrass or annoy the said Aman Moore.

Ninth: BE IT FURTHER RESOLVED, that said newspaper articles referred to above, purporting to convey the false information to the public that the said Aman Moore had been removed as an officer of this company and replaced by Melvin J. Ballard, thereby doing the said Aman Moore an injustice and a damage, be retracted, and

BE IT FURTHER RESOLVED, that the said MacDonald and Newlands be requested to not again repeat such false statements or give out such false information to the newspapers without first being authorized by this Board of Directors. [675]

Defendants' Exhibit No. 28.

FREIGHT BILL.

Delivered to 22548.

6/13/16.

The J. McCracken Co., Portland, Oregon.

c/o McCracken Switch, 15th & Pettygrove Sts.

To Southern Pacific Company, Dr.

For Charges on Articles Waybilled	Waybill date and number	Car initials and number	Freight bill No.
Oswego	6/9 11	NP 26169	24103
via			

ARTICLES	Weight PUB.	Rate	Freight	Advances	Total
C/L Oregon Portland					
560 sx Cement at 95 lbs.					
SL&C 53200	53200	04	2128		
25 ton car ordered					
Industry track					
June 16, 1916					
MC A					

Received payment for the company. J/TJA/AS.

Collect. 21.28.

6/12/16.

(Stamp) SOU. PAC. CO.

R. A. MARTIN,

Agent.

Per Painter.

6/19/16. [676]

DEFENDANTS' EXHIBIT No. 28—Cont'd.

SOUTHERN PACIFIC COMPANY.

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and it is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Oswego, Oregon, June 9, 1916, from ———, the property described below, in apparent good order except as noted (contents and condition of contents or packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road; otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

CONSIGNED TO—The J. McCracken Co. c/o McCracken switch, 15th and Pettygrove, Portland, Oregon; car initial N. P. Car No. 26169.

No. Packages.	Description of Articles and	Weight
1	Special Marks	
Car	"Oregon" Portland Cement 560 sacks	53,200
	S. L. C.	

G. M. LESLIE,

Agent.

Per K.

OREGON PORTLAND CEMENT, Shipper.

Per D. C. WILLIAMSON. [677]

Defendants' Exhibit No. 29.

1104 Wilcox Building,
Portland.

June 13, 1916.

Wasco Lumber Co.,
Wasco, Oregon.

Gentlemen:

The first barrel of Portland Cement ever manufactured in the State of Oregon, and made from material produced within the State, has been put on the market for sale, and we are now ready for furnish you promptly with any amount of Oregon-made Portland Cement that you may require, and further, are in position to guarantee our product to be equal in quality to that of any other brand of cement offered you to-day.

We fully realize the high standard set by our worthy competitors both in quality of their product and splendid treatment extended to their patrons. We know that it is only by at least equaling that standard that we may expect recognition at your hands.

We hope that you may send us an order at once for a carload or more of "OREGON" brand Portland Cement, which we are in position to ship immediately, and which we guarantee to pass specifications recommended by the American Society for Testing Materials as well as the United States Government. We assure you of our sincere appreciation of, and most careful attention to your orders.

Anticipating the pleasure of a favorable reply,
we beg to remain,

Very truly yours,

General Sales Manager.

M-W. [678]

1104 Wilcox Building,
Portland.

June 10, 1916.

Ashland Lumber Co.,
Ashland, Oregon.

Gentlemen:

The first barrel of Portland Cement ever manufactured in the State of Oregon, and made from material produced within the State, has been put on the market for sale, and we are now ready to furnish you promptly with any amount of Oregon-made Portland Cement that you may require, and further, are in position to guarantee our product to be equal in quality to that of any other brand of cement offered you to-day.

We fully realize the high standard set by our worthy competitors both in quality of their product and splendid treatment extended to their patrons. We know that it is only by at least equaling that standard, that we may expect recognition at your hands.

We hope that you may send us an order at once for a carload or more of "OREGON" brand Portland Cement, which we are in position to ship immediately, and which we guarantee to pass specifi-

cations recommended by the American Society for Testing Materials as well as the United States Government. We assure you of our sincere appreciation of, and most careful attention to your orders.

Anticipating the pleasure of a favorable reply, we beg to remain,

Very truly yours,

General Sales Manager.

M-w.

Filed December 23, 1920. G. H. Marsh, Clerk.
[679]

Defendants' Exhibit No. 96.

ARTICLE V.

Executive Committee.

Section 1. There shall be an executive committee to consist of the president, who shall be *ex-officio* chairman, and two other members of the board of directors who shall be appointed by the board. Such committee shall be chosen annually at the first meeting of the board of directors after the annual election of stockholders, or as soon thereafter as possible, and shall, while the board is not in session, have all the powers of the board to manage the affairs and business of said corporation in such manner as said committee shall deem best for the interest of the corporation, and in all cases in which special directions shall not have been given by the board. The members of the executive com-

mittee shall serve during the life of the board that appointed it, provided, however, that any member can be removed by a majority of the board of directors at any regular or special meeting.

Section 2. The executive committee may appoint such subordinate committees as it may deem necessary, and shall keep a full and accurate report of all its actions and proceedings and report the same from time to time to the board of directors.

Section 3. Regular meetings of the executive committee shall be held at the times fixed by said committee, and special meetings may be called at any time by the chairman, and shall be called at the request of any two members of the committee.

Section 4. Notice of each meeting shall be sent by mail or by telegraph to all members of the committee not less than twenty-four hours before the meeting unless such notice is specially waived by the committeemen to whom the same was not so mailed or telegraphed.

Section 5. Two members of the committee shall constitute a quorum for the transaction of business.
[680]

ARTICLE V.

Executive Committee—(Continued).

Section 6. Any vacancy in the committee shall be filled by the board of directors. [681]

Defendants' Exhibit No. 97.

TELEGRAM.

Received at 76 Third St. Cor. Oak., Portland,
Oregon.

1916, Aug. 30, PM. 5 10.

B242SF 150 Coll Blue,

Denver Colo 1156A 30

J. E. Moore,

Oregon Portland Cement Co.,

1104 Wilcox Bldg., Portland, Org.

I have never objected to selling cement in Vancouver or anywhere else and Hollister told me he had a sale ready to close which I supposed was done If the price is profitable by meeting our competitors price then sell all you can but as I understand the situation we cannot get sufficient number of cars in which to load cement for Portland and other Oregon points that make us more money therefore no one who really has the best interest of our company at heart would ask that we fill orders in other states that net us less money and neglect our own state trade Of course we must establish an agency at Vancouver Washington anytime we can get good representation but not place our cement for resale with some one that may prove detrimental to our interests in the future Please show this telegram to Mr. Minor.

CLARK M. MOORE.

Received Aug. 30, 1916.

Filed December 23, 1920. G. H. Marsh, Clerk.

Defendants' Exhibit No. 117.

OREGON PORTLAND CEMENT CO.

Oswego, Oregon.

Denver, Colo., July 12, 1916.

Mr. C. T. W. Hollister,

Oregon Portland Cement Co.

1104 Wilcox Bldg.,

Portland, Oregon.

Dear Sir:

Replying to your letter of July 7th, would say, that I am certainly gratified to know of the tests and reports by Prof. Graf of the Agricultural College, and now that our cement is on the City list, I hope that we may be able to increase our shipments a little.

I should think that Montague and O'Reilly would soon be ready to begin the McMinville work. I am anxious to hear, that you have definitely signed the contract on the Oregon City work. I am surprised, however, at the action taken by Mr. Yates, of Wasco, and I hope you will have Mr. Wellman see him at once. If you have finished with Mr. Wellman in the city sufficiently for the present, he might make some of the eastern territory on those branches from the main line, for the balance of the week, and then return to Portland and continue working in the city. This, however, I leave to your best judgment.

I am glad to have copies of the letters written by J. E., as well as his portion of your letter of the 7th inst., and surely things are breaking for

us in the territory south of Portland, and I anticipate it will only be a short time when we will be able to have practically all of the trade in that territory lined up.

I still expect to see you very soon, and beg to remain meantime,

Yours truly,
CLARK M. MOORE,
General Sales Manager.

CMM/CP.

Filed December 23, 1920. G. H. Marsh, Clerk.
[683]

AND AFTERWARDS, to wit, on the 18th day of August, 1921, there was duly filed in said court a petition of R. P. Butchart for writ of error, in words and figures as follows, to wit:
[684]

In the District Court of the United States for the
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HENSHAW,
GEORGE T. CAMERON, FRED H. MUHS,
JOHN C. EDEN, A. A. SUTHERLAND,
A. F. COATS, ALEXANDER BAILLIE,
W. P. CAMERON, R. P. BUTCHART,
and CLARK M. MOORE,

Defendants.

Petition of R. B. Butchart for Writ of Error.

To the Honorable Judges of the District Court of
the United States for the District of Oregon:

R. P. Butchart, defendant in the above-entitled cause, wherein the United States of America is plaintiff and S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, Tyler Henshaw, George T. Cameron, Fred H. Muhs, John C. Eden, A. A. Sutherland, A. F. Coats, Alexander Baillie, W. P. Cameron, R. P. Butchart, and Clark M. Moore are defendants, by his attorneys, Teal, Minor & Winfree, Wirt Minor, and A. B. Winfree, feeling aggrieved by the judgment entered upon the verdict in the above-entitled cause on the 23d day of February, 1921, prays that a writ of error may issue, and that he, the said R. P. Butchart may be allowed to bring up for review before the Honorable United States Circuit Court of Appeals for the Ninth Circuit said judgment in said cause under and according to the laws of the United States in that behalf made and provided; that your petitioner R. P. Butchart may prosecute said writ of error to the said United States Circuit Court of Appeals for the Ninth Circuit; that the said judgment upon said verdict may be reversed and that said judgment upon said verdict against R. P. Butchart may be reversed by the said United States Circuit Court of Appeals for the Ninth Circuit; that upon the giving by your petitioner of security upon said writ of error in the amount of Eight Thousand Dollars (\$8,000.00)

[685] the proceedings of this court may be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit; and for such other and further relief in the premises as may be just; and your petitioner will ever pray.

Dated this 18th day of August, 1921.

R. P. BUTCHART,

By WIRT MINOR,

One of His Attorneys.

TEAL, MINOR & WINFREE,

WIRT MINOR,

A. B. WINFREE,

Attorneys for the Said Defendant R. P. Butchart.

Service of the within petition for writ of error and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,

Assistant United States Attorney,

Of Attorneys for Defendant in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.

[686]

AND AFTERWARDS, to wit, on the 18th day of August, 1921, there was duly filed in said court a petition of Clark M. Moore for writ of error, in words and figures as follows, to wit: [687]

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HEN-
SHAW, GEORGE T. CAMERON, FRED H.
MUHS, JOHN C. EDEN, A. A. SUTHER-
LAND, A. F. COATS, ALEXANDER BAIL-
LIE, W. P. CAMERON, R. P. BUTCHART,
and CLARK M. MOORE,

Defendants.

Petition of Clark M. Moore for Writ of Error.

To the Honorable Judges of the District Court of the United States for the District of Oregon:

Clark M. Moore, defendant in the above-entitled cause, wherein the United States of America is plaintiff and S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, Tyler Henshaw, George T. Cameron, Fred H. Muhs, John C. Eden, A. A. Sutherland, A. F. Coats, Alexander Baillie, W. P. Cameron, R. P. Butchart, and Clark M. Moore are defendants, by his attorneys, Teal, Minor & Winfree, Wirt

Minor, and A. B. Winfree, feeling aggrieved by the judgment entered upon the verdict in the above-entitled cause on the 23d day of February, 1921, prays that a writ of error may issue, and that he, the said Clark M. Moore may be allowed to bring up for review before the Honorable United States Circuit Court of Appeals for the Ninth Circuit said judgment in said cause and according to the laws of the United States in that behalf made and provided; that your petitioner Clark M. Moore may prosecute said writ of error to the said United States Circuit Court of Appeals for the Ninth Circuit; that the said judgment upon said verdict may be reversed and that said judgment upon said verdict against Clark M. Moore may be reversed by the said United States Circuit Court of Appeals for the Ninth Circuit; that upon the giving by your petitioner of security upon said writ of error in the amount of Five Thousand Dollars (\$5000.00), [687½] the proceedings of this court may be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit; and for such other and further relief in the premises as may be just; and your petitioner will ever pray

Dated this 18th day of August, 1921.

CLARK M. MOORE,

By WIRT MINOR,

One of His Attorneys.

TEAL, MINOR & WINFREE,

WIRT MINOR,

A. B. WINFREE,

Attorneys for the Said Defendant.

Service of the within petition for writ of error and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney, of Attorneys for
Defendant in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.
[688]

AND AFTERWARDS, to wit, on the 18th day of August, 1921, there was duly filed in said court assignment of errors of R. P. Butchart, in words and figures as follows, to wit: [689]

In the District Court of the United States for the
District of Oregon.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. C. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HEN-
SHAW, GEORGE T. CAMERON, FRED
H. MUHS, J. C. EDEN, A. A. SUTHER-
LAND, A. F. COATS, ALEXANDER
BAILLIE, W. P. CAMERON, R. P.
BUTCHART, and CLARK M. MOORE,
Defendants.

Assignment of Errors of R. P. Butchart, Defendant.

Comes now R. P. Butchart, defendant in the above-entitled cause, and plaintiff in error upon

writ of error prosecuted by him in the above-entitled cause, and makes and files the following assignment of errors upon which he relies in the prosecution of said writ of error:

I.

The District Court erred in overruling the demurrer of this defendant to the indictment found by the grand jury in the above-entitled cause.

II.

The District Court erred in overruling the objection of this defendant to the introduction of any evidence in this cause upon the ground that the indictment does not state facts sufficient to charge a crime of any kind or any violation of the law, which objection was made in open court before any evidence was admitted in said cause.

III.

The District Court erred in admitting in evidence a letter written by the agent of the Riverside Portland Cement Company to Tyler Henshaw from Portland, dated April 1, 1914, and in overruling the objection of this defendant to the [690] admission of said letter and permitting said letter to be read to the jury. The said letter was marked Plaintiff's Exhibit 1, and in substance confirms a telegram advising new market price in Portland \$1.70 net, states said price quoted openly and apparently on instructions to California representatives from San Francisco, and further says that the Olympic and Washington representatives claim they had no instructions to make this price and would need such instructions if officially informed

to do so; it also refers to quotations on the Meier & Frank job.

IV.

The District Court erred in overruling the objection of this defendant to a letter written by Jones, agent for the Riverside Portland Cement Company in Portland, to Tyler Henshaw, dated April 7, 1914, and in admitting said letter in evidence and allowing same to be read to the jury. The substance of this letter refers to seeing Hacker, who stated that Seattle price was \$1.60 f. o. b. dock, apparently the result of a fight between Washington mills; that there was no reduction in Portland probably for lack of business, and that Washington mills asserted that their Seattle price would apply to Portland, and that the writer expects a drop in the Portland market; also, in overruling the objection of this defendant to a letter from said Henshaw to said Jones, dated April 11, 1914, and admitting said letter in evidence and to be read to the jury. Both of these said letters are marked exhibit 2. The substance of the said letter of April 11, 1914, is to acknowledge the information contained in the letter of April 7, 1914, as to a fight against Warren Construction Company. [691]

V.

The District Court erred in overruling the objection of this defendant to a telegram sent by C. W. Jones, agent of the Riverside Portland Cement Company to Tyler Henshaw, dated April 19, 1914, and in admitting said telegram in evidence and in permitting the same to be read to the jury,

and in admitting in evidence the answer to said telegram of the same date, which said telegrams are marked Plaintiff's Exhibit No. 3, and the full substance of the same is contained in abstract of exhibits attached to and made a part of the bill of exceptions.

VI.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones, agent of Riverside Portland Cement Company, to Tyler Henshaw, dated April 20, 1914, and admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 4, and the full substance thereof is set forth in abstract of exhibits attached to and made a part of the bill of exceptions.

VII.

The District Court erred in overruling the objection of this defendant to a letter written by said Tyler Henshaw to the said C. W. Jones, dated April 25, 1914, which letter is marked Plaintiff's Exhibit 5, and in admitting said letter in evidence and to be read to the jury. The full substance of said letter is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

VIII.

The District Court erred in overruling the objection of this defendant to a letter written by Tyler Henshaw to [692] the said Jones, dated April 29, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked

Plaintiff's Exhibit 6, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

IX.

The District Court erred in overruling the objection of this defendant to a letter written by said Tyler Henshaw to the said Jones, dated May 13, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 7, and the full substance of the same is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

X.

The District Court erred in overruling the objection of this defendant to certain telegram and letters from C. W. Jones to Tyler Henshaw, dated May 21, 1914, and in admitting said telegram and letters in evidence and in permitting the same to be read to the jury, which telegram and letters are marked Plaintiff's Exhibit 8, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XI.

The District Court erred in overruling the objection of this defendant to a telegram from said C. W. Jones to the said Tyler Henshaw, dated May 27, 1914, and in admitting said telegram in evidence to be read to the jury. Said telegram is marked Plaintiff's Exhibit 9, and the subject matter of the same is fully set forth in the abstract of ex-

hibits attached to and made a part of the bill of exceptions. [693]

XII.

The District Court erred in overruling the objection of this defendant to a letter written by said C. W. Jones to said Tyler Henshaw, dated May 28, 1914, which refers to the telegram mentioned in the last preceding assignment and discusses the Dinwiddie job and the Eden bid, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 10, and the substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XIII.

The District Court erred in overruling the objection of this defendant to a letter written by Tyler Henshaw to C. W. Jones, dated June 1, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit No. 11, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XIV.

The District Court erred in overruling the objection of this defendant to a telegram sent by C. W. Jones to Tyler Henshaw, dated June 1, 1914, and in admitting said telegram in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 12, and the full substance of the same is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XV.

The District Court erred in overruling the objection of this defendant to a letter written by Tyler Henshaw to C. W. Jones, dated June 11, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter [694] is marked Plaintiff's Exhibit 13, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XVI.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones to Tyler Henshaw, dated July 2, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 14, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XVII.

The District Court erred in overruling the objection of this defendant to a telegram sent by C. W. Jones to Tyler Henshaw, dated July 3, 1914, and in admitting said telegram in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 15, and the full substance of the same is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XVIII.

The District Court erred in overruling the objection of this defendant to a night lettergram sent by C. W. Jones to Tyler Henshaw, dated July 6,

1914, and in admitting said paper in evidence and to be read to the jury. Said paper is marked Plaintiff's Exhibit 16, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XIX.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones [695] to Tyler Henshaw, dated July 6, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 17, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XX.

The District Court erred in overruling the objection of this defendant to a letter written to C. W. Jones by Tyler Henshaw, dated July 11, 1914, and in admitting said telegram in evidence and read to the jury. Said letter is marked Plaintiff's Exhibit 18, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXI.

The District Court erred in overruling the objection of this defendant to a telegram sent by Tyler Henshaw to C. W. Jones, dated July 11, 1914, and in admitting said telegram in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 19, and the full substance thereof is set forth in the abstract of exhibits at-

tached to and made a part of the bill of exceptions.

XXII.

The District Court erred in overruling the objection of this defendant to a telegram sent by C. W. Jones to Tyler Henshaw, dated July 31, 1914, and in admitting said letter in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 20, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXIII.

The District Court erred in overruling the objection [696] of this defendant to a letter written by the Riverside Portland Cement Company to Walter Williams Hardware Company, dated August 1, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 21, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXIV.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones to Tyler Henshaw, dated August 1, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 22, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXV.

The District Court erred in overruling the objection of this defendant to a telegram sent by C. W. Jones to Tyler Henshaw, dated August 1, 1914, and in admitting said telegram in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 23, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXVI.

The District Court erred in overruling the objection of this defendant to a telegram sent by Tyler Henshaw to C. W. Jones, dated August 1, 1914, and in admitting said telegram in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 24, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.
[697]

XXVII.

The District Court erred in overruling the objection of this defendant to a telegram sent by Tyler Henshaw to C. W. Jones, dated August 7, 1914, and in admitting said telegram in evidence and to be read to the jury. Said telegram is marked Plaintiff's Exhibit 25, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXVIII.

The District Court erred in overruling the objection of this defendant to a letter sent by C. W. Jones to Tyler Henshaw, dated August 17, 1914,

and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 26, and the substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXIX.

The District Court erred in overruling the objection of this defendant to a letter written by Tyler Henshaw to C. W. Jones, dated August 19, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 27, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions.

XXX.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones to Tyler Henshaw, dated August 24, 1914, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 28, and the full substance thereof is set forth in the abstract of exhibits attached to and made a part of the bill of exceptions. [698]

XXXI.

The District Court erred in overruling the objection of this defendant to a letter written by William G. Henshaw to C. W. Jones, dated November 16, 1914, and in admitting said letter in evidence and to be read to the jury, the substance of which letter is that the Riverside Portland Cement Company has decided to drop out of the Portland market, and directing the agent to make

no further quotations, and to advise the amount of cement on hand and the commitments outstanding. The said letter is marked Plaintiff's Exhibit No. 30.

XXXII.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones to Tyler Henshaw, dated December 5, 1914, and in admitting said letter in evidence and to be read to the jury, and in overruling the objection of this defendant to a telegram of the same date, and in admitting said telegram in evidence and to be read to the jury. The full substance of said letter is that Eden, Coats and Cameron of Balfour, Guthrie & Company left on the Shasta on that date for San Francisco, and that Jones would be in San Francisco on Thursday morning with data. This letter and telegram are marked Plaintiff's Exhibit 31.

XXXIII.

The District Court erred in overruling the objection of this defendant to a letter written by Riverside Portland Cement Company to A. C. Steckle, of Battleground, Washington, dated March 18, 1915, and in admitting said letter in evidence and to be read to the jury. The full substance of this letter is acknowledging an order for cement and stating that the Riverside Company had withdrawn from the market and that [699] rather than delay shipment the order had been referred to Henry Cowell Cement and Lime Company. This letter is marked Plaintiff's Exhibit 32.

XXXIV.

The District Court erred in overruling the objection of this defendant to a letter from C. W. Jones to Tyler Henshaw, dated March 9, 1915, and in admitting said letter in evidence and to be read to the jury. The full substance of this letter is in regard to freight reduction on Interstate Bridge contract. This letter is marked Plaintiff's Exhibit 33.

XXXV.

The District Court erred in overruling the objection of this defendant to a telegram from William Pierce Johnson to Tyler Henshaw, dated June 5, 1915, and in admitting said telegram in evidence and to be read to the jury, and in overruling the objection of this defendant to a letter from said Henshaw to said Johnson in answer to said telegram. Said telegram and letter are marked Plaintiff's Exhibit No. 34. The full substance of this telegram is that the sender has a price of \$1.95 less 1% f. o. b. Portland for 1300 barrels of cement, sacks extra, and asks Tyler Henshaw to assist him, and further states that he expects to require about 3,000 sacks for San Francisco delivery in the near future. The full substance of the day letter in answer thereto is that Henshaw is sending the Portland order to C. W. Jones personally, that the order could not go through the San Francisco purchasing order and that the Riverside Portland cement could not be furnished but some other California brand, and that Jones could probably help out to the extent of about 20¢ per barrel. [700]

XXXVI.

The District Court erred in overruling the objection of this defendant to a day letter sent by C. W. Jones to Tyler Henshaw, dated July 6, 1915, and in admitting said day letter in evidence and to be read to the jury. The full substance of this day letter is that the representatives from every cement mill in the Pacific northwest were in San Francisco on that date, and the sender thought that Henshaw might like to know this fact. This day letter is marked Plaintiff's Exhibit No. 35.

XXXVII.

The District Court erred in overruling the objection of this defendant to a letter from the Bend Company to Riverside Portland Cement Company, dated August 20, 1915, asking for quotations, and the answer from the Riverside Portland Cement Company to the Bend Company, dated August 25, 1915, stating that the Riverside Company is not in a position to quote as it had withdrawn from the cement market in this territory, and refers to the possibility of another cement company entering this market; and the said Court erred in permitting said letter and the answer thereto to be admitted in evidence and to be read to the jury. Said letter and answer thereto are marked Plaintiff's Exhibit 36.

XXXVIII.

The District Court erred in overruling the objection of this defendant to a letter from Riverside Portland Cement Company to the Bend Company, dated August 23, 1915, to the effect that the Riverside Company never handled lime and plaster and

had referred the inquiry of the Bend Company to J. McCracken Company, the exclusive agent for Roche Harbor lime, and in admitting said letter in evidence and to be read [701] to the jury. This letter also states that there is a strong possibility of another cement company entering this field in the very near future. In connection with this letter there was a letter also introduced in evidence and read to the jury from the Bend Company to the Riverside Portland Cement Company, dated August 20, 1915, requesting quotations on cement, lime, plaster, etc. These letters are marked Plaintiff's Exhibit No. 37.

XXXIX.

The District Court erred in overruling the objection of this defendant to any evidence regarding the Interstate Bridge between Portland and Vancouver, and particularly the evidence of the witness C. F. Swigert, in regard to buying cement from International Portland Cement Company for \$1.65 per barrel delivered at Portland on condition that the freight rate on such cement from Spokane to Portland should be 13½¢ hundred, and all evidence of every kind in regard to cement furnished for said Interstate Bridge or in regard to the negotiations between the witness Swigert and cement companies other than the Oregon Portland Cement Company for the purchase of said cement for said purpose; and in admitting any evidence in regard to said matters and in regard to the proposed freight rate on cement from Spokane to Portland. Said evidence is set forth in full in the bill of exceptions,

and the substance of it is that the witness purchased the cement for this purpose from the International Portland Cement Company of Spokane at \$1.65 per barrel delivered in Portland; that he had quotations from other cement companies ranging from \$1.90 to \$1.75, that the price in Spokane at [702] that time ran from \$1.08 to \$1.15, as there was a bitter fight between the International Portland Cement Company and the Lehigh Portland Cement Company; that the witness went to the Spokane, Portland & Seattle Railway Company's officials, and they agreed to put in this rate of 13½¢ per hundred from Spokane to Portland on cement; that he also, lined up about 60,000 barrels of cement, all subject to this rate going into effect; he saw some of the Washington Portland Cement Company people, among others Mr. Coats, and that Coats said that if he would not insist upon Skinner, the agent of the Spokane, Portland & Seattle Railway Company, putting in this rate he would see that the witness was protected in price; that the cement supplied to him was almost entirely Superior cement, a Washington product, or Santa Cruz cement, a California product, and that he paid for this cement \$1.65; that he never got any cement afterwards as cheap; that orders were placed with International Portland Cement Company, but the cement was furnished by the Superior Company or Santa Cruz Cement Company upon these orders, mostly Santa Cruz cement, and that subsequently the orders were placed directly with the Santa Cruz

Company in Portland or with Mr. Bennett, agent of the Superior Company in Vancouver.

XL.

The District Court erred in overruling the objection of this defendant to a contract between the Superior Portland Cement Company and the Pacific Bridge Company, and in admitting said contract in evidence and to be read to the jury. Said contract is marked Plaintiff's Exhibit 38, and in substance is a contract between the Superior Portland Cement Company and the Pacific Bridge Company whereby Superior [703] Portland Cement Company agreed to furnish cement to the Pacific Bridge Company for building the substructure of the Interstate Bridge between Portland and Vancouver at a price of \$1.65 a barrel.

XLI.

The District Court erred in overruling the objection of this defendant to a letter, dated December 28, 1914, written by Henry Cowell Cement Company to the Aberdeen Manufacturing Company, of which company F. M. Wylie was the manager, in which letter the writer advised that the Henry Cowell Lime & Cement Company would not furnish cement to the Aberdeen Manufacturing Company after January 1, 1915; and erred in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit No. 39.

XLII.

The District Court erred in overruling the objection of this defendant to a letter to the Treasury Department, dated February 2, 1915, marked Plain-

tiff's Exhibit 40, and in admitting said letter in evidence and to be read to the jury. Said letter is as follows:

“Treasury Department,
Washington, D. C.

Gentlemen:

We the undersigned dealers in building materials of this city wish to report to you the predicament we find ourselves in at the present time due to a combination made to control the sale of all cement here and also in the adjoining city of Hoquiam. This combination apparently being entered into by the following well known manufacturers of cement: The Superior Portland Cement Company, The Washington Portland Cement Company, and the Olympic Portland Cement Company of this state with head offices in Seattle; [704] The Pacific Portland Cement Company with offices at San Francisco and also the F. G. Foster Company of Hoquiam, Washington, the latter dealers in building materials.

Now this city has been supplied through the undersigned in the past with Washington and California manufactured cements. The T. B. Darragh Company selling the cement of the Pacific Portland Cement Company. The Aberdeen Manufacturing Company selling the cement of the Henry Cowell Lime & Cement Company, and the W. R. Lebo Company selling the cements of all three of the mentioned Washington Companies.

The first of the year saw the following changes here due to this combination. Cement was raised

30c per barrel to the consumer, from \$1.90 to \$2.20 net. The agency held by the Lebo Company of the three Washington cements was taken away from them and given to the F. G. Foster Company who then opened up a branch business here with a stock of building materials. The Pacific Portland Cement Company notified the Darragh Company that they must quote cement no cheaper than \$2.30 net, or 10c above the Foster Company price, which naturally eliminated the Darragh Company from securing any cement business. The Henry Cowell Lime & Cement Company wrote the Aberdeen Manufacturing Company that they had withdrawn from the Washington market and that they would ship no more cement to Aberdeen. Now this action was taken by the California companies the first of the year in spite of the fact that they could get the business at a 30c per bbl. advance in price and a 50c per bbl. advance over what they received for cement here during most of the year 1914, the price then being \$1.70 net. Also, these same California Companies are to-day shipping cement [[705] into Portland, Oregon, at a higher freight cost from San Francisco than the freight cost is to Aberdeen and receiving for this cement in Portland 30c per bbl. less than they can get it in Aberdeen, under the present prevailing market price.

This combination is going to work a great hardship upon us for the following reasons: We deal in all kinds of building materials and as most orders in a city the size of Aberdeen are mixed orders, consisting of cement, lime, brick, etc., etc., a buyer

in nearly every instance wants his requirements from one place and as cement is usually the chief item, this combination is going to stifle competition and give the Foster Company a leverage that must soon draw the bulk of the building material business to them, to the demoralization and perhaps ruin of our business.

Now this combination must certainly be illegal and we are therefore writing you and requesting that your Department investigate this matter and if possible get relief for us.

Yours very truly,

ABERDEEN MANUFACTURING COMPANY,

_____, Mgr.

W. R. LEBO & COMPANY,

_____, Mgr.

T. H. DARRAGH COMPANY,

_____, Mgr."

XLIII.

The District Court erred in overruling the objection of this defendant to the following question propounded to the witness J. G. Bennett, a witness on behalf of the United States:

Question: "What did he say to you about it?" [706]

and in permitting said question to be answered and in admitting in evidence the answer of said witness. The substance of this testimony is that Mr. Lille, a salesman of the Superior Portland Cement Company, made a trip to Vancouver, Washington, and informed said witness that the fighting methods between cement manufacturers were done, and that

there would be a new deal on, and gave the witness to understand that there was a meeting in San Francisco of Washington and California cement manufacturers about the beginning of 1915, and that there would be an adjustment of prices and prices would be much higher and that there would be no deviation from the prices, and advised witness to buy all he thought he could handle; he bought accordingly at \$1.55, and shortly afterwards had a wire that the price would be \$1.90 with the usual dealers' commission.

XLIV.

The District Court erred in overruling the objection of this defendant to a letter written by the witness J. G. Bennett to J. C. Eden and the reply of J. C. Eden to the same upon the back of said letter, and in admitting said letter and answer in evidence and to be read to the jury. The said letter and answer are marked Plaintiff's Exhibit No. 41, and are as follows:

"Vancouver, Washington, April 30, 1915.

Mr. Jno C. Eden,

Seattle, Washington.

Dear Sir:

We wrote your firm asking about the situation in regard to the bridge cement. We have answer saying the rate question had not been settled yet and ending as follows: [707]

If, however, coast cement should be used, we would in all probability have to put it through our

Portland representative, viz., Balfour-Guthrie Company.

(Signed) SUPERIOR PORTLAND CEMENT COMPANY.

A. A. SUTHERLAND.

This does not worry us any as we have been told by both yourself and Mr. Barnes that if Superior Cement is used it will be handled by us. However it looks to us as if your Mr. Sutherland was trying to lose your remaining Vancouver customer.

Very likely it is a California proposition by this time anyway, as the writer saw a schooner unloading cement at the Pacific Bridge Company dock yesterday, but if there is anything doing for us we would like to know about it and not be kept in the dark.

Very truly yours,
BENNETT HDW. CO.

J. G. BENNETT."

"May 5, 1915.

My dear Bennett:

I have yours of the 30th, in regard to cement for the Interstate Bridge. As you doubtless are aware, a contract was entered into between the Pacific Bridge Company and other Portland contractors with the International Portland Cement Company of Spokane, covering their entire requirements.

While it is possible that some of these contracts may be assigned to us, you I think will agree with me that inasmuch as you had nothing to do with the making of the contract between the Bridge Company and the International Company, you would

not be entitled to any commission, particularly as we would doubtless have to pay the International [708] something for making the assignment.

However, the fact is I am quite sure the Bridge Company, if any assignment is made, will insist upon being given either Standard or Santa Cruz cements, as the manufacturers of those brands dock practically all of their cement in the dock of the Pacific Bridge Company in Portland.

Under the circumstances, don't you agree with me that we could not afford to pay two commissions on an order which your firm had nothing to do with placing?

Yours truly,

JCE*T.

_____,
President."

XLV.

The District Court erred in overruling the objection of this defendant to a letter offered in evidence by the United States addressed by Bennett Hardware Company to the Superior Portland Cement Company and the answer on the back of it, and in admitting said letter and answer in evidence and to be read to the jury. The substance of this letter was in regard to the Crown Willamette Paper Company desiring several thousand barrels of cement for work at Camas, Washington, and that it was probable they would buy California cement in Portland using steamers from Portland, and the answer on the back of the letter, which letter is dated April 19, 1916, was to the effect that though Camas was regarded in the territory of the Superior Portland

Cement Company, the relations between some of the officers of the Crown Willamette Paper Company and the California companies was so friendly that they could not meet the situation. Said letters are marked Plaintiff's Exhibit 44. [709]

XLVI.

The District Court erred in overruling the objection of this defendant to a letter from Bennett Hardware Company to J. C. Eden, dated April 30, 1915, and in admitting said letter in evidence and to be read to the jury. This letter is marked Plaintiff's Exhibit 41, and the substance of it is stated in the abstract of exhibits attached to and made a part of the Bill of Exceptions.

XLVII.

The District Court erred in overruling the objection of this defendant to a letter written by the Bennett Hardware Company to the Superior Portland Cement Company, dated August 9, 1916, and in admitting said letter in evidence and to be read to the jury. Said letter is marked Plaintiff's Exhibit 45, and is as follows:

“Vancouver, Washington, August 9, 1916.
Superior Port Cement Company,
Seattle, Washington.

Dear Sirs:

We wired you for a car of cement for the Camas job but ship to Vancouver and we will divert it.

The contractor made arrangements with E. & L. at Portland to test it and they said that they now had a man at Concrete to attend to it.

Pac. Br. Co.

Saw Mr. Swigert yesterday and he said that he would give you more cement business when he moved across to this side.

The enclosed card was left today and the gent said that he was on his way to cover the territory as far as Olympia.

BENNETT HARDWARE COMPANY,
General Hardware and Builders' Supplies.

Just noticed that the stationery was printed double but it is too late to turn back now.

Vancouver, Washington.

Very truly yours,

GUY BENNETT.

Kindly say [710] when can ship above cement.
(Enclosed card)

C. T. Hollister, 1104 Wilcox Building, Portland, Oregon, Representing Oregon Portland Cement Company."

XLVIII.

The District Court erred in overruling the objection of this defendant to a letter identified by the witness Farrington, and in admitting said letter in evidence and to be read to the jury. This letter was written by Santa Cruz Portland Cement Company to F. T. Crowe & Company of Portland, Oregon, dated April 25, 1914, and the full substance of the letter is in regard to a party named Williams of Newport who was buying cement in twenty-five barrel lots, and stated that the writer did not consider that he was entitled to any better price, and despite what anyone else was going to do Santa

Cruz Company are going to use its influence to bring about proper sales conditions in the territory which it served. This letter is marked Plaintiff's Exhibit No. 46.

XLIX.

The District Court erred in overruling the objection of this defendant to a letter written by the Santa Cruz Portland Cement Company, dated July 9, 1914, and in admitting said letter in evidence and to be read to the jury. The substance of the letter is a confirmation of verbal reduction making the price \$1.90 including sacks, ex dock, price to apply from day to day, job contracts closed at \$2.10 ex dock, and for 1915 delivery to be \$2.30 ex dock. This letter is marked Plaintiff's Exhibit 47.

L.

The District Court erred in overruling the objection of this defendant to a letter written by the Santa Cruz Portland Cement Company to the witness Farrington, dated July 31, 1914, [711] and in admitting said letter in evidence and to be read to the jury. The full substance of this letter is set forth in the abstract of exhibits attached to the Bill of exceptions. This letter is marked Plaintiff's Exhibit 48.

LI.

The District Court erred in overruling the objection of this defendant to a letter dated March 24, 1914, written by Superior Portland Cement Company to F. T. Crowe & Company at Tacoma, quoting a reduction from \$1.60 to \$1.50 per barrel at the factory when the cement was purchased by a state or

county only, and in admitting said letter in evidence and to be read to the jury. This letter is marked Plaintiff's Exhibit No. 49.

LII.

The District Court erred in overruling the objection of this defendant to a letter written by the witness Hacker to Fred R. Muhs, dated April 10, 1914, and in admitting said letter in evidence and to be read to the jury. The witness was the agent or dealer of the Santa Cruz Portland Cement Company, at Tacoma, Washington. The substance of this letter was to advise the California mills to put some cement into Puget Sound markets in order to take part in the fight then being carried on between two Washington companies, and also suggesting that the Washington companies were threatening to drive the California companies out of the Oregon market. This letter is marked Plaintiff's Exhibit No. 50.

LIII.

The District Court erred in overruling the objection of this defendant to a letter written by the Superior Portland Cement Company, dated June 1, 1914, to F. T. Crowe & Company of Tacoma, and in admitting said letter in evidence and to be read to the jury. This letter quotes prices to the Olympic [712] Hardware Company and Gray at Puyallup of \$1.20 f. o. b. mill instead of \$1.10, saying \$1.10 was a railway price and adding that the writer had some hope of getting price matters straightened and getting down to some basis so that one might know

what the price of cement really is. This letter is marked Plaintiff's Exhibit 51.

LIV.

The District Court erred in overruling the objection of this defendant to a letter written by the witness Hacker to F. R. Muhs, dated July 2, 1914, and in admitting said letter in evidence and to be read to the jury. In this letter the witness discusses the fight between Coats of the Washington and Baillie of the Olympic, and agent of the Washington in Portland and of Galbraith Bacon & Company in Seattle. This letter is marked Plaintiff's Exhibit 52.

LV.

The District Court erred in overruling the objection of this defendant to a letter from the Olympic Portland Cement Company, signed Balfour Guthrie, to F. T. Crowe & Company, dated July 17, 1914, quoting price of \$1.90 net less 15¢ commission, sacks extra, and in admitting this letter in evidence and to be read to the jury. This letter is marked Plaintiff's Exhibit No. 52.

LVI.

The District Court erred in overruling the objection of this defendant to a letter written by the Superior Portland Cement Company to F. T. Crowe & Company of Tacoma, quoting \$1.90 net f. o. b. Seattle, dated July 17, 1914, and in admitting said letter in evidence and to be read to the jury. This letter is marked Plaintiff's Exhibit No. 54. [713]

LVII.

The District Court erred in overruling the ob-

jection of this defendant to a letter written by the witness Hacker at Tacoma to Fred R. Muhs of Seattle, dated July 23, 1914, and in admitting said letter in evidence and to be read to the jury. This letter acknowledges night letter received, and states that the witness is selling cement from day to day delivery at \$1.50 and upon future contracts at \$1.70, and is sending copy of this letter to Portland. In this letter the witness adds that the people in Washington have seen some wisdom, and prices in Seattle, Portland and Tacoma are \$1.90 firm, and that if the Washington mill would use policy which the witness had suggested to them these prices would stick. This letter is marked Plaintiff's Exhibit 55.

LVIII.

The District Court erred in overruling the objection of this defendant to a letter dated August 27, 1914, marked Plaintiff's Exhibit 56, and in admitting this letter in evidence and to be read to the jury. This letter was written by the Superior Portland Cement Company at Seattle to F. T. Crowe & Company at Tacoma, and in substance it refers to a telephone conversation and states that the Washington cement manufacturers had agreed among themselves that a certain order referred to in the letter should come to the Superior Portland Cement Company, stating that the Superior was putting in a bid of \$1.85½, Washington at \$1.97½, and the Balfour-Guthrie & Company at \$1.90 and requested Crowe & Company not to bid at all on this contract, or if they did bid to bid

slightly above the Superior Portland Cement Company. [714]

LIX.

The District Court erred in overruling the objection of this defendant to a letter from Superior Portland Cement Company, dated Seattle, December 31, 1914, to Crowe & Company, of the same place, quoting price on cement effective January first, \$1.90 net, no commission, and a second letter bearing the same date from Olympic Portland Cement Company to the same party to the same effect, and a further letter from the Olympic Portland Cement Company to the same party, dated Seattle, January 4, 1915, acknowledging the letter of Crowe & Company, dated January 2, 1915, and stating that program properly outlined and that Olympic would sell in carload lots at \$1.90 to any consumer, leaving less than carload lots to dealers, and also a copy of the letter from Crowe & Company to the Olympic, dated January 2, and also a letter from the Superior Portland Cement Company dated Seattle, January 12, 1915, to Crowe & Company, at Tacoma, requesting Crowe & Company to confine their sales to Tacoma and that the Cement Company would appoint other agents at points outside of Tacoma, and that both other factories were adopting the same policy; and also a letter from the Superior Portland Cement Company dated Seattle, February 23, 1915, to said Crowe & Company, relating to the terms upon which its cement would be sold; and to admitting in evidence said letters and each of said letters and permitting the same and each of them to be read to the jury. Said

letters form one exhibit marked Plaintiff's Exhibit No. 57.

LX.

The District Court erred in overruling the objection of this defendant to certain letters offered in evidence and to admitting said letters in evidence and to be read to the jury, which letters were offered as one exhibit and are [715] as follows: Letters from the Superior Portland Cement Company, dated Seattle, January 13, 1916, to Crowe & Company, Tacoma, quotes price \$2.15 including sacks f. o. b. Tacoma, allowance $7\frac{1}{2}\text{¢}$ per sack; also letter from Superior Portland Cement Company, dated Seattle, January 13, 1916, to Crowe & Company, Seattle, quotes \$2.30 f. o. b. Seattle including sacks, sack allowance $7\frac{1}{2}\text{¢}$; also a letter from Washington Portland Cement Company, dated Seattle, January 12, 1916, to Crowe & Company, Seattle, quotes price effective same date \$2.30 f. o. b. Seattle, including sacks, sack allowance $7\frac{1}{2}\text{¢}$; also letter Olympic Portland Cement Company, dated Seattle, January 11, 1916, to Crowe & Company, Seattle, quotes price \$2.30 f. o. b. Seattle, including sacks, sack allowance, $7\frac{1}{2}\text{¢}$. Said letters offered as one exhibit marked Plaintiff's Exhibit No. 58.

LXI.

The District Court erred in overruling the objection of this defendant to a question propounded to the witness Hacker as follows:

“Why did the Standard and Santa Cruz Companies leave the state of Washington?”
and in permitting said question to be propounded

and to be answered, and the answer to be submitted to the jury. This testimony was to the effect that before the Washington Cement Companies were started Washington and Oregon were dumping grounds for California Companies; the California Companies selling into Montana and Idaho up to the point where they met eastern competition. When the Washington cement mills started, the California mills were restricted in territory where the Washington mills could supply cement cheaper by reason of freight rates. At that time the California companies were selling in eastern Washington [716] as far as Spokane, freight rates being such that the Washington companies could not sell in eastern Washington. Afterwards eastern Washington mills were started and they crowded the California mills out of that territory, but Portland was the last place to which the California mills could ship as a dumping ground, and for this reason it was impossible to maintain prices because of conflict between the dealers; that the dealers were urging cement companies to get together and maintain prices; and as the California mills continued to sell in Washington there was a fight between all the mills.

LXII.

The District Court erred in overruling the objection of this defendant to certain letters marked Plaintiff's Exhibit 63 received by Galbraith Bacon & Company of Seattle, from Superior Portland Cement Company of Seattle, Washington Portland Cement Company of Seattle, Olympic Portland Ce-

ment Company of Seattle, all dated February 10, 1914, and giving the same price and commission to dealers; and in admitting said letters in evidence and to be read to the jury.

LXIII.

The District Court erred in overruling the objection of this defendant to a letter identified by the witness Eden, dated April 18, written by J. C. Eden to W. H. George, and a letter dated April 24 attached to the same, both offered in evidence together and marked Plaintiff's Exhibit 74, and the admission of said letters in evidence and the reading thereof to the jury. Said letters are as follows:

April 18, 1916.

Dear Will:

Was mighty sorry on my visit to San Francisco last week not to have had time to have a few minutes talk with you, not only to speak about the Association, but to thank you [717] personally for the wonderful party you gave us in San Francisco when I was there about two months ago.

Regarding the Association matters, I think your objection to any contribution in excess of $\frac{1}{4}\text{¢}$ per barrel was the same as my own, viz,—that too much of the $\frac{3}{4}\text{¢}$ voted at the Association meeting in New York last December was to be divided to national advertising and to other uses that were of very doubtful value in our particular section of the country. I sincerely hope that you will be in accord with all of those present at the meeting with Mr. Beck in San Francisco last week agreed to do.

So far as the Northwest is concerned, I am positive that the spending of the 80% of the $\frac{3}{4}\text{¢}$ per barrel contribution will be a very good investment, and will enable us to reduce a good share of the direct expense we have been put to in each individual company attempting its promotion work.

I don't know whether you formed as favorable an impression of Mr. Beck as I did, but he certainly strikes me as being the right man in the right place, and I hope that you will join the rest of us in lending him your heartiest co-operation.

With kindest regards and hoping that I may see you again in a short time, I am,

Yours truly,

Mr. W. H. George, 2 Market Street,

San Francisco, California."

"U. P. Company,	1916 May 15 A. M. 7:20	Received
President's Office	Ret'd.....	Portland Cement
1916, May 15 A. M. 8:32	Answ'd.....	Association
Ref'd to		May 15, 1916
Answ'd.....		Noted BFA.

HENRY COWELL LIME AND CEMENT
COMPANY,

2 Market street.

San Francisco, April 24, 1916.

Attention of Mr. J. C. Eden. [718]

Superior Portland Cement Company,
Seattle, Washington,

My dear Jack:

Replying to yours of April 18th, beg to advise that on April 20th I wired Mr. Beck as follows:

‘We will stay with the Association under new plan until October first, the date when the year that we joined for is up. Will then consider the matter again. Am afraid local competitors will not stop private promotion.’

At first I was not sure about Beck, but the more I saw him the more I liked him and am willing to play the string out for the term of our enlistment of one year from October 1, 1915, to October 1, 1916.

Altogether I am free to confess that I am not quite sure as to the advisability of all this. I feel as tho a company like our own could probably to better advantage as far as its own interests were concerned, do its own promotion work, but I do realize that this looks like a selfish position, because if the others were all in the Association, promoting the Association work, we of course get some measure of benefit. This, at this time, is the real reason that keeps our company in the Association, with the further hope that during the balance of the time that we are in, that things will develop so that all hands will see the advisability of a Coast Association, as I thoroughly believe in this.

I hope before long to have an opportunity to discuss all of this personally with you.

Yours very truly,

W. H. GEORGE, Secretary.”

WHG-w.

LXIV.

The District Court erred in overruling the objection of this defendant to the introduction of cer-

tain papers identified [719] by the witness Eden marked Plaintiff's Exhibit 75, and to admitting said papers in evidence and to be read to the jury. These papers consist of telegrams passing between F. R. Muhs and J. C. Eden, of Kenny & Eden, between said Eden and one Coats, the president of the Washington Portland Cement Company, and between J. G. Woodworth, vice-president of the Northern Pacific Railroad Company, and said Eden; all of these papers related to the proposed freight rate upon cement from the International Portland Cement Company to the city of Portland to enable said cement company to deliver its cement to Portland to fulfill the contract of the Pacific Bridge Company, and show the effort made by the Washington companies and representatives of the Superior, the Washington and Olympic Cement Companies to prevent this rate being put in; and this defendant avers that the Court erred in admitting said papers or any of them in evidence and in admitting the same or any of them to be read to the jury.

LXV.

The District Court erred in overruling the objection of this defendant to certain papers identified by the witness Eden and marked Plaintiff's Exhibit 76, and to admitting the said papers in evidence and to be read to the jury. Said papers consist of certain correspondence passing between Aman Moore and J. C. Eden, dated March 25, 1916, and relate to the manner of supervising paving

work and contain the statement of Eden to the effect that inasmuch as his company would probably not participate in the cement business in Oregon, they could not see their way clear to assume any of the expense of promotion in Oregon.

LXVI.

The District Court erred in sustaining the objection of the United States to the introduction in evidence of certain papers identified by the witness Eden. These papers consist [720] of publications of the Portland Cement Association published and circulated by cement companies throughout the United States for the promotion of the use of cement and to educate the public in regard thereto.

LXVII.

The District Court erred in overruling the objection of this defendant to certain letters identified by the witness W. P. Cameron, to wit, a letter dated August 4, 1916, marked Plaintiff's Exhibit 78, and certain other papers offered therewith identified by said witness, marked Plaintiff's Exhibit 79, and in admitting said papers and letters in evidence and to be read to the jury. These letters consist of correspondence passing between Foster & Company of Hoquiam and the Washington Portland Cement Company, Olympic Portland Cement Company and the Superior Portland Cement Company of Seattle, dated in August and September, 1916. The substance of these letters was that Foster & Company were acting as dealers and distributors

of the cement of all three Washington companies in Hoquiam and that vicinity, giving each of said companies a fair share of the tonnage and putting all three companies upon the same footing.

LXVIII.

The District Court erred in overruling the objection of this defendant to a carbon copy of letter written by Tyler Henshaw to R. P. Butchart, marked Plaintiff's Exhibit 89, and in admitting said letter in evidence and to be read to the jury. Said letter is as follows:

“September 24, 1914.

Mr. R. P. Butchart,

Care Vancouver Portland Cement Company,
Victoria, B. C.

My dear Mr. Butchart:

I have been trying very hard to find an opportunity to run up to Victoria to see you for a day, but [721] have found it utterly impossible this time. I wanted to talk to you about two things—both are of a very intimate nature, but on account of the very warm feeling that I have for you, and which I trust is to some extent reciprocated, I would not hesitate to talk or write you, but of course I would much prefer to talk to you.

The first is in regard to Carl Leonardt. He is a very peculiar man. He has off and on been trying to start a cement plant somewhere in southern California. Why; I don't understand, for he certainly knows the conditions as well as any man. Southern California is as much overproduced as any other section of the coast. After

many abortive efforts to find a property, he finally located one apparently and seemed to have started in seriously to interest capital in it. This property is located out on Cajon Pass on the Santa Fe railroad. It is not particularly well located, being four or five miles from a railroad, in a desert section of the mountains where it would be inevitably hard to keep men at work. He cannot produce his cement ever anywhere nearly as cheap as we are producing it, although we will concede him just as good a quality. Now he is attempting to go into an already overloaded market. I don't understand some people in this way, however, I want to make my story as short as possible.

He came to San Francisco about two months ago and called in to see me. I asked him if he intended to put up a plant on his property, and he said yes. Then I went over the matter very friendly, kindly way with him; told him what the situation was; how terribly overburdened that section was with cement; how the mills already there would [722] have to wait ten or fifteen years until the demand grew up to the present output. All of which seemed to make little impression, but finally I said to him: Now, see here, Mr. Leonardt, we have been very loyal friends of yours; have given you your cement under the market right along; we have protected you in your business, and being a cement man, as you are, you are doing this with your eyes wide open, therefore, it is only fair for me to say to you this: that we will not stand patiently by and see you put up another mill and add

more trouble to our market. You have an indubitable right to put up a mill, but we have just as indubitable right to protect our market, and the moment you put your cement on the market we propose to put the price down where neither you nor ourselves can make any money, and we will continue it there.

Now, Mr. Butchart, I don't bluff. The situation there is so bad now with Colton and ourselves and the little Gordon state mill, that if Leonardt comes in with a mill we might just as well start in and clean up the situation one time as another and let the man with the longest pole take the persimmon.

Leonardt thought this over and finally intimated he thought I was about right in my attitude, and told me if I would come down in the course of five or six weeks we would go down to the property and sell it out to me. No price was agreed upon, but he stated positively he would do so. I went down south, telephoned him, and he came over to Riverside. We took a machine and went out there, and after looking over the property I told him I was ready to buy it and to name his price and terms. He then began to shy and finally told me he would be up to San Francisco in about two weeks and would then settle the matter with me, which could only mean he would sell it to me. I tried to urge him to close [723] up then but he would not do so, but he again promised that within two weeks he would be up and sell it to me. I even said to him,—you mean, you will sell this property outright to me, and he said, yes.

Now he is keeping out of my way. There is no question in my mind that he is going to try to interest capital. I don't think anybody would be foolish enough under the circumstances to go into the proposition with him. Freight is against him and he can't manufacture as cheaply as we can. My honest belief is that we can make \$300,000.00 a year and keep him out of the market, or make him sell below cost. I may be wrong, but I firmly believe it and propose to tackle it anyway if he bobs up.

Now, without betraying any confidence as far as Mr. Leonardt is concerned, can you tell me whether he said anything to you about his plans down here. If so, what they were and whether you inferred he was seriously contemplating putting up a mill. I know you will tell me whatever you can properly, and I don't ask of you anything that is not proper for you to tell me, but whatever you do tell me will not go under any circumstances beyond my brother and myself.

Now, secondly: This must be considered by you as strictly confidential, but I am writing you personally so that you will have a full knowledge of the situation here in Oregon, and I am writing you only from that standpoint and because of my warm personal friendship.

I have bought a property here which I have been testing for something like a year. It is a property which in combination with our clinker, makes a cement of a remarkably high type. In fact, Mr. Butchart, in many ways exceeds regular Portland

cement. This property will enable me to put a cement on the market here at a cost from 65¢ to 75¢ a barrel, not exceeding the latter price, and I think we can do it after a year's run, under [724] the former price. Mind you, I am only talking of prospects. We are testing the material carefully in all directions; putting it into walls, putting it into highways; testing it under most unfavorable conditions, and so far it has shown up wonderfully. I am perfectly candid, and always with you my cards are never anything but 'face up on the table.' I am not quite through with my experiments with this cement, but will have finished them within the next three or four months, and will have it in practical use unknown to anyone except a few engineers. Within the next three or four months, I will have had over a year's full test upon the material, all compression and tension tests, etc., and will be in a position to know exactly what the material is. I shall put it on the market in Portland at not over, I think, \$1.25 a barrel, and some of it for mass work, harbor work, street work, and the like, will be sold for probably \$1.00 to \$1.10 in this market.

Now, I have heard nothing further for many, many months about the prospects of this Portland Cement Company here. I have understood you are not interested in this company here any further, although my information, naturally was not authentic, but anyway I want you to know privately and confidentially what my prospects are here, so that at least if you were contemplating any

movement in regard to this cement plant, you would have full knowledge for your own personal benefit of what my prospects were. The whole plant that I will put up will not cost over \$100,000.00, and my estimates already made and carefully checked, do not exceed \$75,000 for a plant to produce safely 400,000 barrels per annum. [725] I will say this further, that I do not expect to put on the market over 200,000 to 300,000 barrels per annum anyway, but *if* this cement turns out as every test shows it to, covering a period of eight months or more, and *if* I can produce it with as little original investment, and *if* this little affair starts in without a dollar of indebtedness of any sort, and *if* I can produce it at the price I have stated or lower, it would be a serious competitor for any cement mill to face.

If there is anything further you would particularly like to know about it, write me any question and I will gladly answer you fully.

Regretting exceedingly that I did not find the time to run up and discuss these matters with you, and with warmest personal regards, I beg to remain,

Yours very sincerely,

P. S.—In reading this letter over, while I have written it only from the friendliest motives, I fear it may sound to you in the nature of a possible menace. I hope you know me well enough to believe that nothing of the kind is intended. The reason that I am writing is feeling that as I have a warm personal friendship for you, it seemed only

justice to that friendship to tell you confidentially the prospects that were before me in this market in the cement line. I can see no reason why there should not be room for us both, and as indicated I do not intend to come in here and try to supply the entire market. In fact I know perfectly well that it would be impossible for me to do so, but at the same time I hope you understand that I am only telling you of these prospects (of course they are as yet only prospects) that might to some extent militate against any program you had set out in this market, if you are still connected with the Portland Cement Company here. [726] You know that you and I could work side by side in this market without any trouble. I feared you might, if I said nothing about this beforehand, feel that I had failed in the matter of friendship to you in not letting you know confidentially and beforehand."

LXIX.

The District Court erred in sustaining the objection of the United States to a certain letter identified by the witness Aman Moore, written by Wirt Minor to Aman Moore, dated July 25, 1916, which letter is as follows:

"July 25, 1916.

Mr. Aman Moore,

Care Mr. Coy Burnett,

Lewis Building, Portland, Oregon.

Dear Sir: I am in receipt of communication dated July 24th addressed to the Directors of Oregon Portland Cement Company and signed by yourself,

in which you demand that an immediate directors' meeting be called for the purpose of obtaining various data from the parties named; that is to say, Mr. R. P. Butchart, Mr. Newlands, Mr. Macdonald, Mr. Clark M. Moore, and Mr. Ballard to the end that suit may be instituted under the Federal 'Treble Damage Statutes' for the damages sustained by the company through alleged illegal agreement on the part of the gentlemen above named.

This matter was brought before the Board informally at its last meeting and you were requested by myself to state what action you desired to take but for some reason you did not see fit to do anything whatever.

The by-laws of the corporation, article IV, section 4, provide that

'Special meetings of the board of directors shall be called by the Secretary when he is [727] requested so to do by the president, on three days' notice to each director.'

Special meetings shall be called in like manner on request of a majority of the members of the board. You are aware that the president of the corporation is now absent. You yourself are one of its vice-presidents. Section 2 of article VI of the by-laws provides that

'In the event of the absence of the president, one of the vice-presidents shall exercise the powers and perform the duties of the president during such absence, subject to the advice and control of the board or of the executive committee.'

You, therefore, have it in your power to call this meeting and I shall be pleased to have you do so. If you are not willing to take the responsibility of calling the meeting, I am perfectly willing to be one of a majority of the board to call such meeting. It will require this call to be signed by five of the directors. Mr. Butchart is away; Mr. Bates has tendered his resignation, but it has not been accepted as yet at your instance; Mr. Wilson has tendered his resignation, but the same has not yet been accepted; and Mr. Johnson is away. It will therefore be necessary for you to be one of the five directors to join in the call.

If you desire to have the meeting called, as suggested, and will come to my office, I shall take pleasure in preparing the call and in signing it. I do not know, however, whether Mr. Butchart and Mr. Newlands, who are charged by you with malfeasance in office, will consent to sign such call or not; if not, you will have to procure the signatures of Messrs. Wilson and Bates. [728]

As Mr. Butchart and other directors are charged with malfeasance in office, I think it will be but reasonable that the meeting when called shall be called for such time as to give these parties an opportunity to attend and respond in person.

Yours very truly,

WIRT MINOR."

WM/R.

LXX.

The District Court erred in sustaining the objection of the United States to the introduction in evi-

dence of the letter offered by the defendants written by Wirt Minor to Aman Moore, dated August 29, 1916, and in refusing the said letter to be identified or introduced in evidence. This letter is as follows:

August 29, 1916.

“Mr. Aman Moore,
Oswego, Oregon.

Dear Sir: As one of the directors of the Oregon Portland Cement Company and as one of its general attorneys or counsel, I hereby demand that you afford me an opportunity to investigate the facts upon which the suit brought by you in the name of the Oregon Portland Cement Company is based. In connection with this demand I also demand that you afford me an opportunity to examine all the evidence from which these facts have been deduced or inferred.

I also desire you to advise me by what authority this action was commenced, for as you are aware it was commenced without consulting the Board of Directors. I should be pleased to confer with your attorneys at any time regarding the matter and to examine the evidence in their offices and to this end I am sending a copy of this letter to each of your attorneys of record.

I will add that I have been requested to take this step by several of the directors of the corporation.

Yours truly,
WIRT MINOR.”

WM/MH. [729]

LXXI.

The District Court erred in overruling and denying the motion of this defendant to instruct the jury to disregard all correspondence between Aman Moore and this defendant prior to the time that Clark M. Moore was elected Sales Manager in considering this case with reference to the guilt or innocence of Clark M. Moore, and that said correspondence should not be considered in arriving at the verdict as to the guilt or innocence of Clark M. Moore, and particularly to the statement made by the district court as follows:

“Of course any statements or admissions Mr. Butchart made before Mr. Moore became connected with this company would not be competent as admission of guilt against Clark M. Moore, but would be competent for the purpose of showing the status of the company and the condition at that time, and the admission made against the interest of Mr. Butchart.”

LXXII.

The District Court erred in overruling the objection of this defendant to the introduction in evidence of a certain telegram and letter marked Plaintiff's Exhibit 104, and in admitting said telegram and letter in evidence and to be read to the jury. The telegram is dated San Francisco, August 2, 1915, and is addressed to W. R. Lebo at Aberdeen, and is as follows:

“Cannot accept contract, writing.”
and the letter which refers to the telegram with-

draws a quotation of \$2.40 a barrel and quotes \$2.70 less usual sack allowance, dealers' commission and cash discount.

LXXIII.

The District Court erred in overruling the objection of this defendant to certain correspondence passing [730] between Carl Leonardt and the witness W. H. George, consisting of a letter from George to Leonardt, dated February 1, 1916, and the answer thereto, dated February 7, 1916, and the reply to said answer, dated February 8, 1916, all of which were offered as one exhibit, and marked Plaintiff's Exhibit 105; and to the admission of said letters and each of them in evidence and to the reading of said letters and each of them to the jury. These letters are as follows:

“(In pencil)

L. B. 10/13/20.

HENRY COWELL LIME AND CEMENT CO.

2 Market Street.

San Francisco, February 1, 1916.

Mr. Carl Leonardt,

c/o Southwestern Portland Cement,

H. W. Hellman Building, Los Angeles.

My dear Mr. Leonardt:

I arrived home safely and want to thank you for your very kind and courteous treatment when I was at Los Angeles.

Please remember me kindly to Mr. Merrill and to Mr. Schirm.

I hope that by this time the get-together talk which I made it my particular business to give to

all of those who are in the lime business, is bearing fruit and that the conditions are better and settled.

I congratulate you on the layout and character of your new cement plant and trust that when she begins operation you will find a ready market for a reasonable output, at the highest price, and under regular terms and conditions.

Regarding regular terms and conditions: I enclose you herewith a little suggestion which I trust will be interesting. We have found it to work out to the best possible advantage here. [731]

I hope to be able to write you in a few days that the allowance for returned empty sacks has been changed to $7\frac{1}{2}$ cents.

Again thanking you and conveying to you my best personal regards, I remain,

Yours very truly,

W. H. GEORGE."

WHG-W.

"Monday, February 7, 1916.

(In pencil)

L. B. 10/13/20.

Mr. W. E. George, Sec'y.

Henry Cowell Lime & Cement Company,

2 Market street, San Francisco, California.

My dear George: I received your letter of February 1st and thank you very much for the contents. That is the proper spirit! I refer to where you mention regarding our new cement plant that you 'trust when it begins operation we will find a ready market for a reasonable output,' etc.

Some of our cement manufacturers seem to think that no one else has a right to engage in the same business and manufacture and sell cement, which is entirely wrong as this is a free country and every man has a right to make an honest living and any combine to ruin a competitor by misrepresentation and crookedness is wrong, which soon or late they will find out to their sorrow if they do not change their tactics.

You know a good neighbor cannot live in peace if the bad neighbor does not want him to. The Portland plant as well as the Victorville plant wants to live in peace, but no man has the right to say that these plants have no right to manufacture or sell cement. These plants only want their rights which they hope to obtain by peaceful and harmonious methods. Of course you know what it means to a large manufacturer as compared to one that has less capacity, when it comes to price cutting. I leave it to you to say who can stand it the longest. [732]

I was in San Francisco last Saturday, leaving the same evening. I talked with your office, but you were at the factory. Mr. Butchart was with me and no doubt will write you from Del Monte. You can see him at any time and go into details with him, and should something of importance come up I will be willing to go to San Francisco at any time.

Wishing you success, I am,

Yours very truly,

President."

“HENRY COWELL LIME & CEMENT CO.

2 Market street.

San Francisco, February 8, 1916.

(In pencil)

L. B. 10/13/20.

Carl Leonardt, Esq.,

Pres. Southwestern Portland Cement Company,

710 H. W. Hellman Building, Los Angeles.

Dear Mr. Leonardt:

I am just in receipt of yours of February 7th and hasten to reply. I am willing to admit the truth of every word that you say and you know how I feel about these matters. I feel that that is exactly the way they should be carried out.

Undoubtedly by this time you have my other letter written from the plant on last Saturday.

At this writing I am at a loss to know where Mr. Butchart is. My understanding was that he was going to Los Angeles, probably with you from San Francisco, altho my first impression was that he was going direct to Los Angeles. I have written him in your care at Los Angeles, and am now awaiting results as to whether it is best for me to go to Los Angeles, to see him at Del Monte when he goes there, or to await his arrival [733] again at San Francisco.

When in Los Angeles I outlined to you what I wanted to say to Mr. Butchart, and I do hope that it will be agreeable and work to a satisfactory end. I shall be very glad indeed to advise you of all results.

Thanking you indeed for your many courtesies,
I remain,

Yours very truly,
W. H. GEORGE,
Secretary."

WHG-w.

LXXIV.

The District Court erred in overruling the objection of this defendant to questions addressed to the witness W. D. Skinner, Traffic Manager of the Spokane, Portland & Seattle Railway, in regard to putting in a special rate on cement from Spokane to Portland in 1915 in order to get the haul of the cement for the Interstate Bridge, and to admitting said evidence or any thereof.

LXXV.

The District Court erred in overruling the objection of this defendant to the introduction in evidence of a certain paper marked Plaintiff's Exhibit 151, and to admitting said paper in evidence and to be read to the jury. The said paper is as follows:

"S. P. & S. will publish rate $13\frac{1}{2}$ cents on cement c/l from Irwin, Washington, to Vancouver, Washington, and Portland, Oregon, if Irwin plant secures contract for interstate bridge cement. W. D. Skinner, F. T. M. Portland, Oregon, 3/6/15."

LXXVI.

The District Court erred in overruling the objection of this defendant to a certain paper offered in evidence by the United States marked Plaintiff's

Exhibit 152, and to admitting [734] said paper in evidence and to be read to the jury. This paper is a letter from the International Portland Cement Company to W. D. Skinner, in which they state:

“Have not secured contract, please publish rate with least possible delay.”

LXXVII.

The District Court erred in overruling the objection of this defendant to certain papers identified by the witness W. D. Skinner, marked Plaintiff's Exhibit 153, and in admitting said papers in evidence and to be read to the jury. Said papers were offered as one paper, and they consist of telegram dated March 11, 1915, from the International Portland Cement Company to said Skinner, as follows:

“Did not receive copy of traffic, must have effected earliest date.”

and the reply of said Skinner thereto as follows:

“Hands tied temporarily, will advise definitely few days.”

LXXVIII.

The District Court erred in sustaining the objection of the United States to a question propounded to the witness F. R. Muhs as follows:

Question: “Now, give the jury some idea of how profitable it has been, say how much money in proportion to the capital your mills have made?”

The witness had testified that the companies with which he was identified, the Santa Cruz Port-

land Cement Company and the Standard Portland Cement Company, after 1908 had made money, and the evidence sought to be elicited was for the purpose of showing that the amount of money made had been small as compared with the capital invested. [735]

LXXIX.

The District Court erred in sustaining the objection of the United States to a question propounded to the witness F. R. Muhs, in which he was requested to tell the jury whether in his judgment, taking into consideration the cost of manufacturing and the freight which was paid on cement, the price charged by his mills was or was not a reasonable price.

LXXX.

The District Court erred in sustaining the objection of the United States to testimony tendered by the defendants through the witness L. C. Newlands as to the reasonable cost of putting up the mill of the Oregon Portland Cement Company in 1915 and 1916, which evidence was offered for the purpose of showing the cost of the manufactured product, the defendants claiming that the cost or value of the factory is a proper element to take into consideration in ascertaining the cost of the manufactured product.

LXXXI.

The District Court erred in the ruling of the Court excluding evidence offered by the defendants through the witness Ballard, that after he had made investigation into the affairs of the Oregon Port-

land Cement Company as Vice-President and Acting President of said corporation and had interviewed all the parties who were conducting the business of said corporation in order to ascertain whether or not the Oregon Portland Cement Company or its officers were violating the provisions of the law under which the indictment was found, that he found no evidence to sustain a charge of violation of this law, and in refusing to admit evidence to this effect.

LXXXII.

The District Court erred in sustaining the objection of the United States to the following question propounded to [736] the witness Ballard by the attorneys for the defendants:

Question: "What did you do, Mr. Ballard, in order to ascertain the price at which the Oregon Portland Cement Company's products were being sold?"

and erred in refusing said question to be answered and in refusing to allow the defendants to show by this witness the prices at which the Oregon Portland Cement Company's products were sold.

LXXXIII.

The District Court erred in sustaining the objection [737] of the United States to the following question propounded by the witness Ballard:

Question: "And what, if anything, did he say to you with regard to prices at which the products of the mill were to be sold?"

and in refusing to permit the defendants to show what Clark Moore told Mr. Ballard, Vice-President and Acting President of the corporation, in regard

to prices at which the products of the mill were sold. The testimony which was offered was for the purpose of showing that Clark Moore said nothing in regard to prices at which products of the mill were to be sold.

LXXXIV.

The District Court erred in overruling the objection of this defendant to the following question propounded to the witness H. S. McCracken:

Question: "At what price did you sell cement at that time?"

and erred in allowing said question to be answered. The witness McCracken was a dealer in cement in the city of Portland; he had testified in regard to prices which he paid for cement to the Oregon Portland Cement Company and other cement manufacturers; and the testimony admitted was to the effect that he sold cement at \$2.30 because he could get no more for his cement than other companies could get, that the California companies were selling cement in Portland through their own selling agencies, and were selling to the public at \$2.30.

LXXXV.

The District Court erred in sustaining the objection of the United States to the admission in evidence of a certain telegram offered by the defendants addressed to R. P. Butchart and signed by Charles Boettcher, E. Possett, and R. J. Morse, dated July 27, 1916. This telegram had been identified by the witness Wirt Minor as a telegram shown him or read to him [738] by Aman Moore at a meeting held in his office between Aman

Moore, Clark M. Moore, representing Mr. Boettcher, and Harry Ross, representing Mr. Butchart. This telegram is as follows:

July 27, 1916.

“R. P. Butchart,

Vanderbilt Hotel, New York City.

We have inspected your plant here and have no criticisms to make of Mr. Newlands' management but on account of notoriety of lawsuit and damage to company would recommend Aman Moore be placed in charge of plant and quarries leaving sales as at present and that you wire Mr. Newlands to resign and permit the election of some new member to Board of Directors. We have talked to number stockholders here and they are unanimous that settlement should be made with Moore to prevent notoriety and damage of his suit. Bank also refuses to extend loan unless assured suit will not be brought. We have looked over figures in office and find we must have at once fifty thousand dollars more to meet pay rolls and bills. Wilcox will loan part if board is reorganized. If change meets with your approval will you kindly wire Teal and Minor attorneys and stockholders to call meeting and reorganize board and appoint Moore superintendent.

C. BOETTCHER,

R. J. MORSE,

E. POSSETT.”

and erred in excluding said testimony.

LXXXVI.

The District Court erred in sustaining the objection of the United States to the admission in evi-

dence of a telegram from the witness Clark M. Moore to Grant Fee and of a letter from Grant Fee to the witness. These papers were marked defendants' identification 112 and 113 respectively, and were excluded by the ruling of the Court. In substance they relate to the proposed visit of Clark M. Moore to San Francisco [739] in August, 1916, and to a meeting which he wished to have with Grant Fee at that time with a view to selling him Oregon Portland cement for the erection of the Portland postoffice. The witness had testified in regard to the purpose for which he had gone to California, and among other things he went there to see Mr. Fee to sell him if possible the cement for the Portland postoffice, for which said Fee had obtained a contract.

LXXXVII.

The District Court erred in sustaining the objection of the United States to certain telegrams offered in evidence by the defendants, marked defendants' identifications 114 and 115, and to the exclusion of said telegrams from the evidence by the ruling of the Court. The witness Clark M. Moore had testified regarding a visit he made in August, 1916, to San Francisco, and among other objects of that visit was to see a Mr. Hiltz who was a representative of the Portland Cement Association on the Pacific Coast with a view to having him come to Portland and arrange for an inspector on some road work which was being done to see that the work should be done according to specifications, and in connection therewith the defendants offered in evi-

dence certain telegrams, as aforesaid, for the purpose of showing this to be, among other things, his object in going to San Francisco.

LXXXVIII.

The District Court erred in overruling the objection of the defendant to excerpts from a letter written by the witness Clark M. Moore to Mr. Boettcher, dated May 18, 1916. This letter was written by Mr. Clark M. Moore to Mr. Boettcher after a meeting of the Portland Cement Association in Chicago, dated May 18, 1916, and said excerpts and letter are marked Plaintiff's Exhibit 163. [740]

LXXXIX.

The District Court erred in that part of its charge to the jury as follows:

"It (the indictment) contains two counts: the first charges certain parties, managers, or representatives of cement manufacturing concerns in the states of Oregon, Washington, and California with entering into an unlawful combination or agreement in restraint of trade. . . . The second count charges the same parties by means of the same arrangement and combination with monopolizing the trade in cement in these several states."

XC.

The District Court erred in that part of its charge to the jury as follows:

"Section 2 of the Act provides that every person who shall monopolize any part of the trade or commerce among the several states or with foreign nations, shall be guilty of a misdemeanor."

XCI.

The District Court erred in that portion of its charge to the jury as follows:

“Now the second count of the indictment, as I have already said to you, charges the defendants with monopolizing the trade or commerce between the states, in violation of section two of the Act, which provides that all persons who shall monopolize or attempt to monopolize or combine with any person or persons to monopolize any part of the trade or commerce among the several states, shall be guilty of a crime. To constitute the offense of monopoly, under the Act, it is necessary to acquire exclusive right to such commerce by means which will prevent others from engaging therein. The popular meaning of monopoly is the [741] sole power of dealing in some particular commodity, in some particular market or place, or carrying on some particular business. Anything less than this is not a monopoly. The size of a business is not in itself a violation of this law. The act denounced by the statute is the certain and necessary prevention of other persons engaging in such business and thereby stifling or preventing competition. The evil against which the statute is directed is not the enlargement of the trade of one person, but the destruction of the trade of others, in some commodity. It is the suppression of competition by the unification of interest or management, or by agreement or concerted action. It signifies

the combining or bringing together into the hands of one person, or group of persons, the control, or the power of control, over a particular business or employment, so that competition may be suppressed by preventing others from engaging therein.”

XCII.

The District Court erred in that part of its charge to the jury relating to the Portland Cement Company prior to the organization of the Oregon Portland Cement Company, and particularly to that portion as follows:

“There have been introduced in evidence some letters passing between Mr. Butchart and Mr. Aman Moore at a time prior to the date the Oregon corporation began marketing its product, and prior to the time that Clark Moore became connected with the concern.” . . .

“They are, however, evidence against Mr. Butchart, and may be considered by you for the purpose of showing the conditions as they existed at the time Clark Moore became Sales Manager of the Oregon Company.” [742]

XCIII.

The District Court erred in that portion of its charge to the jury as follows:

“Certain letters have also been introduced in evidence, written by Aman Moore and addressed to Mr. Butchart, which contain statements or suggestions concerning fixing prices or allotment of territory, by agreement with other manufacturers. The statements or suggestions

contained in these letters are not evidence against Mr. Butchart, and do not tend to prove the connection of Butchart with any such agreement or combination, unless it appears that he acquiesced in the suggestion, or acted thereon, or combined with other manufacturers in accordance with the statements or suggestions so made by Moore.

Various letters have also been introduced written by officials, or associates of officials of cement manufacturers in Washington and California, to defendants Clark Moore and Butchart. Any statements, suggestions, or requests contained in any such letters are not to be taken or deemed as evidence of the guilt or innocence of the defendants Moore or Butchart, unless Butchart or Moore acquiesced in such statements and acted thereon or combined with other cement manufacturers in accordance with the statements or suggestions made or contained in the letters, but these letters are a part of the evidence, showing the relation existing between these people, and their conduct and actions, and for that purpose are competent and should be given such weight as you gentlemen may think they entitled to."

and the District Court erred particularly in that portion of the charge as follows:

" . . . but these letters are a part of the evidence, showing the relation existing between these people, and their conduct and actions, and for that purpose are competent and should be

given such weight as you gentlemen may think [743] they are entitled to.”

XCIV.

The District Court erred in its charge to the jury as follows:

“There has also been some testimony to the effect that charges of illegal combination were made to the directors of the Oregon Company in June, 1916, and perhaps later. These charges culminated, as you will recall, in certain suits or actions brought by Aman Moore against certain officers or directors of the Oregon Company, and also resulted in the appointment of a stockholders committee, to investigate these charges. The opinion of this committee, or of any director, as to the truth of the charges, is quite immaterial and should be disregarded by you. The fact that such charges were made, however, may be considered by you in connection with the manner of conducting the business of the company, and you may compare what was done before and after the charges were made and these suits filed, if there was any change in the manner of doing business, in passing upon the guilt or innocence of the defendants; and it is for you to determine whether sales, if any, made in Washington, after the making of these charges, were designed or intended for the purpose of evading such charges.”

and particularly the District Court erred in that portion of said charge as follows:

“ . . . The fact that such charges were made, however, may be considered by you in connection with the manner of conducting the business of the company, and you may compare what was done before and after the charges were made and these suits filed, if there was any change in the manner of doing business, in passing upon the guilt or innocence of the defendants; and it is for you to [744] determine whether sales, if any, made in Washington, after the making of these charges, were designed or intended for the purpose of evading such charges.”

XCV.

The District Court erred in that portion of its charge, which is as follows:

“Mr. Butchart, however, while upon the stand, testified that he did not make certain statements attributed to him by Aman Moore, but said nothing about the letters written by him to Aman Moore, nor did he say anything about the meeting in San Francisco, referred to in these letters, nor offer any explanation of the letters, or any other statements contained therein. Now this was his privilege, and being a defendant he could not be required to say more if he did not desire to do so, nor could he be cross-examined as to matters not covered by the direct testimony, but upon passing upon the evidence in this case for the purpose of finding the facts, you have a right to take this omission of the defendant into consideration. A defendant is not required under the law to take

the witness-stand. He cannot be compelled to testify at all, and if he fails to do so no inference unfavorable to him may be drawn from that fact, nor is the prosecution permitted, in that case, to comment unfavorably upon the defendant's silence. But where a defendant elects to come upon the witness-stand and testify he then subjects himself to the same rulings that apply to any other witness, and if he has failed to deny or explain acts of an incriminating nature that the evidence of the prosecution tends to establish against him, such failure may not only be commented upon, but may be considered by [745] the jury with all the circumstances, in reaching their conclusion as to his guilt or innocence, since it is a legitimate inference that could he have truthfully denied or explained the incriminating evidence, if there is any against him, he would have done so."

and the District Court erred particularly in that portion of the charges as follows:

" . . . Nor did he say anything about the meeting in San Francisco referred to in these letters."

XCVI.

The District Court erred in that portion of its charge wherein the Trial Court instructed the jury in regard to certain letters written by Aman Moore to R. P. Butchart, and which contain statements or suggestions concerning fixing prices by allotting territory by agreement with other manufacturers, and particularly to that portion of the charge wherein

the Court submitted to the jury said letters as evidence against the defendant R. P. Butchart, if

“it appears that he acquiesced in the suggestions, or acted thereon, or combined with other manufacturers in accordance with the statements or suggestions.”

XCVII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing as follows:

“Portland cement is a mineral product. Certain earths or minerals, principally lime and clay, are mixed in specific proportions, fused by intense heat into a new uniform composition known as klinker and this klinker ground to an impalpable powder with certain ingredients added, is the Portland cement of commerce. It is sold by [746] barrels, for in the earlier stages of the industry the containers were always wooden barrels. The net content of such barrel was 376 pounds of cement. In the latter development of the industry the practice obtained and now rules upon the Pacific Coast of packing the cement in sacks, each sack weighing 94 pounds. Thus four of these sacks equal one barrel by the sales are still in terms of barrels, and mill capacity is spoken of in terms of barrels. When of a given mill it is said that it has a capacity of 1,000 barrels, it means that working to capacity that mill can output 1,000 barrels a day. In the sales of cement on the Pacific Coast provision is usually made to com-

pensate the ultimate purchaser for a return of sacks in good condition. In this regard the usual allowance is from $7\frac{1}{2}$ to 10 cents per sack.

To the successful manufacturer of cement a factory requires its limestone quarry and its clay deposit; the other ingredients, such as gypsum, etc., usually being purchased abroad. The rough materials brought to the mill are subjected to a drying heat, to grinding to a given degree of fineness, to admixture in due proportions, and then to an intense heat in kilns. The product of this is known as klinker. The klinker marks the termination of the first stage in the production of cement. It may be heaped in piles and exposed to the air and improves rather than deteriorates by this from the beneficial chemical changes which result from the action of the oxygen in eliminating the free lime which the klinker may contain. In the second process of manufacture the klinker is ground to an extreme fineness, thoroughly mixed with the minor ingredients and transported to the warehouse or packing house as the completed product ready for the market. The principal ingredients [747] being furnished by the earth in a state of nature the cost of these in their primitive state is not as a rule great. That cost is principally composed of the investment in mill machinery and of labor. The mill machinery is complicated and expensive. Dryers, grinders, kilns, conveyors, etc. Much heat being neces-

sary, the fuel item is an extremely heavy one. Owing to the nature of the process by which cement is made the necessary application of intense heat, the kilns and other machinery are subject to rapid deterioration in use. The life of a cement mill in operation is ten years, or, in other words, the necessary renewals and replacements have in ten years substituted a completely new set of machinery for the original."

XCVIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Portland cement is an article of commerce and under the law must be tested before it is placed upon the market and any brand of Portland cement which stands these tests and fulfils the requirements of the law can be used in all work in which Portland cement is used."

XCIX.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Every manufacturer has the right to ascertain in any legitimate way the price at which goods manufactured by others and competing with the product of his mills are sold. Competing manufacturers issuing price lists from time to time may legally exchange their respective price lists. Competing manufacturers may lawfully advise one another of the territory in which their manufactured products are mar-

keted and may lawfully advise one another of the prices at which their respective products are [748] put upon the market. Giving and receiving such information is not forbidden by law."

C.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"It is therefore a natural conclusion that the mere fact that a manufacturer of Portland cement in the State of California, Oregon, and Washington may have issued from time to time price lists or circulars stating the price at which and terms on which the product of his factory would be sold and that a similar price list or circular letter may have been issued by some or by all other manufacturers of Portland cement in said states and that in all of said price lists or circular letters issued at or about the same time the price of Portland cement is the same and the terms of sale the same, will not in itself constitute a violation of the statute or be in contravention of the law nor can you find the defendants guilty upon evidence of this character alone even though you should find that every manufacturer sold his product at the same price and upon the same terms. To constitute a violation of the law there must also be evidence which satisfies your minds beyond a reasonable doubt that such prices or terms were fixed by agreement or com-

bination between the several manufacturers and that defendants Butchart and Moore were parties to such agreement or combination.”

CI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows :

“Every manufacurer of Portland cement has the legal right to determine from time to time the territory in which [749] the parties to whom, the prices at which, and the manner in which the product of his factory shall be sold. He may also issue price lists or circulars and employ any other method which he may desire to advertise or sell the product of his mill. Such conduct is not a violation of the statute under which the defendants are indicted or in contravention of any law.”

CII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows :

“Every commodity such as Portland cement is under normal business conditions put upon the market for sale and sold and the average price at which such commodity is sold is commonly designated as the market or market price. Under normal conditions Portland cement is sold in this manner and the price at which it is so sold from time to time would constitute the market price at the time. Such mar-

ket price naturally changes from time to time due to cost of manufacture, cost of transportation, supply and demand, and to other causes too numerous to enumerate. Each sale affects and therefore each manufacturer in offering and selling his factory's output necessarily contributes to making the market price and of course such action on his part is not in violation of law. It is only the making or fixing of the market price by agreement, combination or conspiracy with other manufacturers which is prohibited, so that if you are not satisfied by the evidence beyond a reasonable doubt that either of the defendants, Butchart and Moore, as officers or agents of Oregon Portland Cement Company did agree or combine or conspire with other manufacturers of Portland cement in the states above mentioned to make or fix the market price for Portland cement, or agree or combine or conspire with other manufacturers to limit the territory in which Oregon Portland Cement Company should sell its [750] products or agree or combine or conspire with other manufacturers to limit the territory or fix the price at which the products of the mill of some other manufacturers should be sold, you must return a verdict of not guilty."

CIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“I have permitted the Government to introduce evidence tending to show that in 1915 the Spokane, Portland & Seattle Railway Company promised to reduce its freight charges upon Portland cement from Irwin, Washington, to Portland, Oregon, and Vancouver, Washington, and that the Western Washington Cement Manufacturers and some of the Northern California Cement Manufacturers combined to defeat such proposed change in the freight rate and that they succeeded in defeating the same by promising to supply cement from their mills for the Interstate Bridge at the price at which cement for this purpose was offered by the Irwin plant if the rate had been installed. Such action on the part of the Western Washington and California manufacturers, if proven to your satisfaction, would not constitute a violation of the statute on which this indictment is based.”

CIV.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“There is a distinction between restraint of competition and restraint of trade. The latter expression had, when the anti-trust act was passed, a definite legal signification. Not every combination in restraint of competition [751] is in restraint of trade. But it does not necessarily follow that restraint of competition is a restraint of interstate trade and commerce.

The determination of whether it be so must depend upon the facts and circumstances of each individual case. It is undoubtedly the policy of the statute that competitive conditions in interstate trade should be maintained wherever their abolition would tend to suppress or diminish interstate trade. But this being true does not read into the statute a denunciation of all agreements that may restrain competition without regard to their purpose or direct effect to restrain 'trade or commerce among the several states.' To what extent the anti-trust act condemns combinations that restrain full and free competition in interstate trade is a question that has been much debated, and it has been settled that it does not condemn combinations which only indirectly, remotely, or incidentally restrain interstate trade.

The language of the anti-trust act is not to receive that literal construction which will impair rather than enhance freedom of interstate commerce. Restraint of interstate trade and restraint of competition in interstate trade are not interchangeable expressions. There may be, under the anti-trust act, restraint of competition that does not amount to restraint of interstate trade."

CV.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Even if you are satisfied from the evidence that there was an agreement or conspiracy or

combination or a concert [752] of action among the manufacturers of Portland cement in the states above mentioned to define the territory in which or the prices at which the product of the several factories or mills should be sold, yet such agreement, conspiracy, or combination is not necessarily within the prohibition of the statute, for to constitute a violation of the statute you must also be satisfied from the evidence beyond a reasonable doubt that said manufacturers thereby intended to restrain interstate commerce in cement in the market for Portland cement to an unreasonable degree or that interstate commerce in cement was thereby restrained to an unreasonable extent."

CVI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"It is entirely lawful for anyone to do what he can to prevent a transportation company from putting in a freight rate which he may deem unjust and discriminatory, and which he may think will injuriously and unjustly affect his business. Any number of persons who may be similarly situated may join in opposing the installation of such freight rate. It is in evidence that the Western Washington Cement Manufacturers and some of the Northern California Cement Manufacturers combined in 1915 to defeat a proposed change or

reduction in the freight rate on cement from Irwin, Washington, to Portland, Oregon and Vancouver, Washington, but this action on their part was legitimate and lawful, and does not constitute any violation of the Sherman Act."

CVII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows: [753]

"Manufacturers of Portland cement may lawfully ascertain the markets or territories in which and the price or prices at which other manufacturers of Portland cement sell or market their products, and having this information or knowledge may use the same in marketing their own product so long as they do not agree or combine or conspire with such other manufacturers, but act independently of them. It is only actions taken by agreement or combination or conspiracy with other manufacturers which the law prohibits."

CVIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"The indictment charges that an agreement, combination, or conspiracy was entered into between certain parties representing certain manufacturers of Portland cement in the states of California, Oregon, and Washington, to control or limit the territory in which the output

of the several factories should be marketed and to fix the prices at which it should be sold and that defendants Butchart and Moore as the officers and agents of Oregon Portland Cement Company were parties to or became parties to such agreement, combination, or conspiracy, and that such agreement, conspiracy, or combination was entered into for the purpose of restraining interstate commerce in Portland cement in said states and that such interstate commerce was thereby actually restrained. Before you can find either of the defendants Butchart or Moore guilty, you must therefore find or be satisfied by the evidence beyond a reasonable doubt, first, that such agreement, conspiracy, or combination was entered into by the defendants named in the indictments or by some of them; second, [754] that such agreement, combination, or conspiracy was entered into for the purpose of restraining interstate commerce in Portland cement in said states; third, that it did restrain or restrict such commerce; fourth, that the defendant or defendants Butchart and Moore were parties to or became parties to said agreement, conspiracy, or combination; fifth, that the defendant or defendants Butchart and Moore were parties to or became parties to said agreement, conspiracy, or combination as officers or agents of Oregon Portland Cement Company; and, sixth, that interstate commerce in said states in Portland cement would neces-

sarily be restrained or was actually restrained by such alleged agreement, conspiracy, or combination to an unreasonable extent or degree. If you find that one of the defendants Butchart or Moore was not a party to such agreement, combination, or conspiracy, you must find him not guilty, and if you find that neither of the defendants Butchart or Clark M. Moore was a party thereto, you must return a verdict of not guilty in favor of each of said defendants.”

CIX.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“There is no evidence in this case which tends to show that either R. P. Butchart or Clark M. Moore monopolized or attempted to monopolize the trade or commerce in Portland cement among the states or combined with any person or persons to monopolize any part of the trade or commerce in Portland cement among the several states. You will therefore return a verdict in their favor in the second count of of the indictment.”

CX.

The District Court erred in refusing to charge the jury was duly requested by this defendant in writing, as follows: [755]

“The evidence before you is not sufficient to establish the guilt of the defendant R. P. But-

chart, and you are hereby directed to return a verdict in his favor of Not Guilty.”

CXI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“The evidence before you is not sufficient to establish the guilt of the defendant Clark M. Moore, and you are hereby directed to return a verdict in his favor of Not Guilty.”

CXII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“Certain letters have been introduced, written by Aman Moore and addressed to R. P. Butchart, which contain statements or suggestions concerning the fixing of price, the allotment of territory, or agreements with other manufacturers. I instruct you that statements or suggestions made by Aman Moore recited or contained in such letters are not evidence against said Butchart and do not tend to prove the connection of said Butchart with any such agreements or combinations, unless it be further shown independent of such statements or suggestions so made by said Aman Moore and contained in said letters, that said Butchart acquiesced in said statements and acted thereon or combined with other cement manufacturers in accordance with the statements

or suggestions so made by said Aman Moore and contained in said letters."

CXIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows: [756]

"Letters have been admitted in evidence written by Aman Moore to R. P. Butchart and by R. P. Butchart to Aman Moore dated prior to April 14, 1916, the date upon which Clark Moore was selected or appointed Sales Manager for the Oregon Portland Cement Company. Any statements contained in such letters or correspondence are not evidence for or against Clark Moore, unless you should find that such letters show a combination, conspiracy, or agreement as charged in the indictment, and that after Clark Moore became Sales Manager of the Oregon Portland Cement Company on April 14, 1916, he acted in furtherance of such combination or conspiracy and aided, abetted, or assisted in carrying out and performing the agreements so made."

CXIV.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Various letters have been introduced written by officials or associates of officials from cement manufacturers in Washington and California to defendants Clark Moore and R. P. Butchart. I instruct that any statements, sug-

gestions, or requests contained in such letters are not to be taken or deemed as evidence of the guilt or innocence of defendants R. P. Butchart and Clark Moore unless it be further shown by evidence independent of the statements contained in such letters that defendants Butchart or Clark Moore acquiesced in such statements and acted thereon or combined with other cement manufacturers in accordance with the statements or suggestions so made or contained in said letters."

CXV.

The District Court erred in overruling and denying [757] the motion and application of this defendant to set aside the verdict of the jury returned in this cause and grant a new trial to this defendant and in refusing to set aside said verdict and grant a new trial to this defendant.

R. P. BUTCHART,
By WIRT MINOR,
One of His Attorneys.

TEAL, MINOR & WINFREE,
WIRT MINOR,
A. B. WINFREE,

Attorneys for Defendant R. P. Butchart.

Service of the within assignment of errors and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney,
Of Attorneys for Defendants in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.
[758]

AND AFTERWARDS, to wit, on the 18th day of August, 1921, there was duly filed in said court, an assignment of errors of Clark M. Moore, in words and figures as follows, to wit: [759]

In the District of the United States for the District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HENSHAW,
GEORGE T. CAMERON, FRED
H. MUHS, JOHN C. EDEN, A. A. SUTHERLAND,
A. F. COATS, ALEXANDER
BAILLIE, W. P. CAMERON, R. P. BUTCHART,
and CLARK M. MOORE.

Defendants.

**Assignment of Errors of Clark M. Moore,
Defendant.**

Comes now Clark M. Moore, defendant in the above-entitled cause, and plaintiff in error upon the writ of error prosecuted by him in the above-entitled cause, and makes and files the following assignment of errors upon which he relies in the prosecution of said writ of error:

I.

The District Court erred in overruling the demurrer of this defendant to the indictment found by the grand jury in the above-entitled cause.

II.

The District Court erred in overruling the objection of this defendant to the introduction of any evidence in this cause upon the ground that the indictment does not state facts sufficient to charge a crime of any kind or any violation of the law, which objection was made in open court before any evidence was admitted in said cause.

III.

The District Court erred in admitting in evidence a letter written by the agent of the Riverside Portland Cement Company to Tyler Henshaw from Portland, dated April 1, 1914, and in overruling the objection of this defendant to the admission of said letter and in permitting said letter to be [760] read to the jury. The said letter was marked Plaintiff's Exhibit 1, and in substance confirms a telegram advising new market price in Portland \$1.70 net, states said price quoted openly and apparently on instructions to California representatives from San Francisco, and further says that the Olympic and Washington representatives claim they had no instructions to make this price and would need such instructions if officially informed to do so; it also refers to quotations on the Meier & Frank job,

IV.

The District Court erred in overruling the objec-

tion of this defendant to a letter written by Jones, agent for the Riverside Portland Cement Company in Portland, to Tyler Henshaw, dated April 7, 1914, and in admitting said letter in evidence and allowing same to be read to the jury. The substance of this letter refers to seeing Hacker, who stated that Seattle prices was \$1.60 f. o. b. docks, apparently the result of a fight between Washington mills; that there was no reduction in Portland probably for lack of business, and that Washington mills asserted that their Seattle price would apply to Portland, and that the writer expects a drop in the Portland Market; also, in overruling the objection of this defendant to a letter from said Henshaw to said Jones, dated April 11, 1914, and admitting said letter in evidence and to be read to the jury. Both of these said letters are marked Exhibit 2. The substance of said letter of April 11, 1914, is to acknowledge the information contained in the letter of April 7, 1914, as to a fight against Warren Construction Company. [761]

V.

The District Court erred in overruling the objection of this defendant to a letter written by William G. Henshaw to C. W. Jones, dated November 16, 1914, and in admitting said letter in evidence and to be read to the jury, the substance of which letter is that Riverside Portland Cement Company has decided to drop out of the Portland market, and directing the agent to make no further quotations, and to advise the amount of cement on hand and

the commitments outstanding. The said letter is marked Plaintiff's Exhibit No. 30.

VI.

The District Court erred in overruling the objection of this defendant to a letter written by C. W. Jones to Taylor Henshaw, dated December 5, 1914, and in admitting said letter in evidence and to be read to the jury, and in overruling the objection of this defendant to a telegram of the same date, and in admitting said telegram in evidence and to be read to the jury. The full substance of said letter is that Eden, Coats, and Cameron of Balfour Guthrie & Company left on the Shasta on that date from San Francisco, and that Jones would be in San Francisco on Thursday morning with data. This letter and telegram are marked Plaintiff's Exhibit 31.

VII.

The District Court erred in overruling the objection of this defendant to a letter written by Riverside Portland Cement Company to A. C. Steckle, of Battleground, Washington, dated March 18, 1915, and in admitting said letter in evidence and to be read to the jury. The full substance of this letter is acknowledging an order for cement and stating that the Riverside Company had withdrawn from the market and that rather than [762] delay shipment the order had been referred to Henry Cowell Cement & Lime Company. This letter is marked Plaintiff's Exhibit 32.

VIII.

The District Court erred in overruling the objec-

tion of this defendant to a letter from C. W. Jones to Tyler Henshaw, dated March 9, 1915, and in admitting said letter in evidence and to be read to the jury. The full substance of this letter is in regard to freight reduction on Interstate Bridge contract. This letter is marked Plaintiff's Exhibit 33.

IX.

The District Court erred in overruling the objection of this defendant to a telegram from William Pierce Johnson to Tyler Henshaw, dated June 5, 1915, and in admitting said telegram in evidence and to be read to the jury, and in overruling the objection of this defendant to a letter from said Henshaw to said Johnson in answer to said telegram. Said telegram and letter are marked Plaintiff's Exhibit No. 34. The full substance of this telegram is that the sender has a price of \$1.95 less 1% f. o. b. Portland for 1300 barrels of cement, sacks extra, and asks Tyler Henshaw to assist him, and further states that he expects to require about 3,000 sacks for San Francisco delivery in the near future. The full substance of the day letter in answer thereto is that Henshaw is sending the Portland order to C. W. Jones personally, that the order could not go through the San Francisco purchasing order and that Riverside Portland cement could not be furnished but some other California brand, and that Jones could probably help out to the extent of about 20¢ per barrel. [763]

X.

The District Court erred in overruling the objection of this defendant to a letter from the Bend

Company to Riverside Portland Cement Company, dated August 20, 1915, asking for quotations, and the answer from the Riverside Portland Cement Company to the Bend Company, dated August 25, 1915, stating that the Riverside Company is not in a position to quote as it had withdrawn from the cement market in this territory, and refers to the possibility of another cement company entering this market; and the said Court erred in permitting said letter and the answer thereto to be admitted in evidence and to be read to the jury. Said letter and answer thereto are marked Plaintiff's Exhibit 36.

XI.

The District Court erred in overruling the objection of this defendant to a letter from Riverside Portland Cement Company to the Bend Company, dated August 23, 1915, to the effect that the Riverside Company never handled lime and plaster and had referred the inquiry of the Bend Company to J. McCracken Company, the exclusive agent for Roche Harbor lime, and in admitting said letter in evidence and to be read to the jury. This letter also states that there is a strong possibility of another cement company entering this field in the very near future. In connection with this letter there was a letter also introduced in evidence and read to the jury from the Bend Company to the Riverside Portland Cement Company, dated August 20, 1915, requesting quotations on cement, lime, plaster, etc. These letters are marked Plaintiff's Exhibit No. 37.

XII.

The District Court erred in overruling the objec-

tion of this defendant to any evidence regarding the Interstate Bridge between Portland and Vancouver, and particularly the [764] evidence of the witness C. F. Swigert, in regard to buying cement from International Portland Cement Company for \$1.65 per barrel delivered at Portland on condition that the freight rate on such cement from Spokane to Portland should be $13\frac{1}{2}\text{¢}$ a hundred, and all evidence of every kind in regard to cement furnished for said Interstate Bridge or in regard to negotiations between the witness Swigert and cement companies other than the Oregon Portland Cement Company for the purchase of said cement for said purpose; and in admitting any evidence in regard to said matters and in regard to the proposed freight rate on cement from Spokane to Portland. Said evidence is set forth in full in the bill of exceptions, and the substance of it is that the witness purchased the cement for this purpose from the International Portland Cement Company of Spokane at \$1.65 per barrel delivered in Portland; that he had quotations from other cement companies ranging from \$1.90 to \$1.75, that the price in Spokane at that time ran from \$1.08 to \$1.15, as there was a bitter fight between the International Portland Cement Company and the Lehigh Portland Cement Company; that the witness went to the Spokane, Portland & Seattle Railway Company's officials, and they agreed to put in this rate of $13\frac{1}{2}\text{¢}$ per hundred from Spokane to Portland on cement; that he also lined up about 60,000 barrels of cement, all subject to this rate go-

ing into effect; he saw some of the Washington Portland Cement Company people, among others Mr. Coats, and that Coats said that if he would not insist upon Skinner, the agent of the Spokane Portland & Seattle Railway Company, putting in this rate, he would see that the witness was protected in price; that the cement supplied to him was almost entirely Superior cement, a Washington [765] product, or Santa Cruz cement, a California product, and that he paid for this cement \$1.65; that he never got any cement afterwards as cheap; that orders were placed with International Portland Cement Company, but the cement was furnished by the Superior Company or Santa Cruz Cement Company upon these orders, mostly Santa Cruz cement, and that subsequently the orders were placed directly with the Santa Cruz Company in Portland or with Mr. Bennett, agent of the Superior Company in Vancouver.

XIII.

The District Court erred in overruling the objection of this defendant to a contract between the Superior Portland Cement Company and the Pacific Bridge Company, and in admitting said contract in evidence and to be read to the jury. Said contract is marked Plaintiff's Exhibit 38, and in substance is a contract between the Superior Portland Cement Company and the Pacific Bridge Company, whereby Superior Portland Cement Company agreed to furnish cement to the Pacific Bridge Company for building the sub-structure of the Interstate Bridge

between Portland and Vancouver at a price of \$1.65 a barrel.

XIV.

The District Court erred in overruling the objection of this defendant to a letter to the Treasury Department, dated February 2, 1915, marked Plaintiff's Exhibit 40, and in admitting said letter in evidence and to be read to the jury. Said letter is as follows:

"Treasury Department,
Washington, D. C.

Gentlemen:

We the undersigned dealers in building [766] materials of this city wish to report to you the predicament we find ourselves in at the present time due to a combination made to control the sale of all cement here and also in the adjoining city of Hoquiam. This combination apparently being entered into by the following well known manufacturers of cement: The Superior Portland Cement Company, The Washington Portland Cement Company, and the Olympic Portland Cement Company of this state with head offices in Seattle; The Pacific Portland Cement Company of California with offices at San Francisco, and also the F. G. Foster Company of Hoquiam, Washington, the latter dealers in building materials.

Now this city has been supplied through the undersigned in the past with Washington and California manufactured cements. The T. B. Darragh Company selling the cement of the Pacific Portland Cement Company. The Aberdeen Manufacturing

Company selling the cement of the Henry Cowell Lime & Cement Company, and the W. R. Lebo Company selling the cements of all three of the mentioned Washington Companies.

The first of the year saw the following changes here due to this combination. Cement was raised 30¢ per barrel to the consumer, from \$1.90 to \$2.20 net. The agency held by the Lebo Company of the three Washington cements was taken away from them and given to the F. G. Foster Company who then opened up a branch business here with a stock of building materials. The Pacific Portland Cement Company notified the Darragh Company that they must quote cement no cheaper than \$2.30 net, or 10¢ above the Foster Company price, which naturally eliminated the Darragh Company from securing any cement business. The Henry Cowell Lime & Cement Company wrote the Aberdeen Manufacturing Company that they had withdrawn from the Washington market and that they would ship [767] no more cement to Aberdeen. Now this action was taken by the California companies the first of the year in spite of the fact that they could get business at a 30¢ per bbl. advance in price and a 50¢ per bbl. advance over what they received for cement here during most of the year 1914, the price then being \$1.70 net. Also, these same California companies are to-day shipping cement into Portland, Oregon, at a higher freight cost from San Francisco than the freight cost is to Aberdeen and receiving for this cement in Portland 30¢ per bbl.

less than they can get for it in Aberdeen, under the present prevailing market price.

This combination is going to work a great hardship upon us for the following reasons. We deal in all kinds of building materials and as most orders in a city the size of Aberdeen are mixed orders, consisting of cement, lime, brick, etc., etc., a buyer in nearly every instance wants his requirements from one place, and as cement is usually the chief item, this combination is going to stifle competition and give the Foster Company a leverage that must soon draw the bulk of the building material business to them, to the demoralization and perhaps ruin of our business.

Now this combination must certainly be illegal and we are therefore writing you and requesting that your Department investigate this matter and if possible get relief for us.

Yours very truly,

ABERDEEN MANUFACTURING COMPANY,

_____, Mgr.

W. R. LEBBO & COMPANY,

_____, Mgr.

T. H. DARRAGH COMPANY,

_____, Mgr.'" [768]

XV.

The District Court erred in overruling the objection of this defendant to the following question propounded to the witness by J. G. Bennett, a witness on behalf of the United States:

Question: "What did he say to you about it?"

and in permitting said question to be answered and admitting in evidence the answer of said witness. The substance of this testimony is that Mr. Lille, a salesman of the Superior Portland Cement Company, made a trip to Vancouver, Washington, and informed said witness that the fighting methods between cement manufacturers were done, and that there would be a new deal on, and gave the witness to understand that there was a meeting in San Francisco of Washington and California cement manufacturers about the beginning of 1915, and that there would be an adjustment of prices and prices would be much higher and that there would be no deviation from the prices, and advised witness to buy all he thought he could handle; he bought accordingly at about \$1.55, and shortly afterwards had a wire that the price would be \$1.90 with the usual dealers' commission.

XVI.

The District Court erred in overruling the objection of this defendant to a letter written by the witness J. G. Bennett to J. C. Eden and the reply of J. C. Eden to the same upon the back of said letter, and in admitting said letter and answer in evidence and to be read to the jury. The said letter and answer are marked Plaintiff's Exhibit No. 41, and are as follows:

“Vancouver, Washington, April 30, 1915.

Mr. Jno. C. Eden,

Seattle, Washington.

Dear Sir: We wrote your firm asking about the situation [769] in regard to the bridge cement. We have answer saying the rate question had not been settled yet and ending as follows:

If, however, coast cement should be used, we would in all probability have to put it through our Portland representative, viz., Balfour-Guthrie & Co.

Signed—SUPERIOR PORTLAND CEMENT CO.

A. A. SUTHERLAND.

This does not worry us any as we have been told by both yourself and Mr. Barnes that if Superior cement is used it will be handled by us. However it looks to us as if your Mr. Sutherland was trying to loose your remaining Vancouver customer.

Very likely it is a California proposition by this time anyway, as the writer saw a schooner unloading cement at the Pacific Bridge Co. dock yesterday, but if there is anything doing for us we would like to know about it and not be kept in the dark.

Very truly yours,

BENNETT HDW. CO.

J. G. BENNETT.”

May 5, 1915.

My dear Bennett:

I have yours of the 30th in regard to cement for the Interstate Bridge. As you doubtless are aware, a contract was entered into between the

Pacific Bridge Co. and other Portland contractors with the International Portland Cement Co., of Spokane, covering their entire requirements.

While it is possible that some of these contracts may [770] be assigned to us, you I think will agree with me that inasmuch as you had nothing to do with the making of the contract between the Bridge Company and the International Company, you would not be entitled to any commission, particularly as we would doubtless have to pay the International something for making the assignment.

However, the fact is I am quite sure that the Bridge Company, if any assignment is made, will insist upon being given either Standard or Santa Cruz cements, as the manufacturers of those brands dock practically all of their cement in the dock of the Pacific Bridge Company in Portland.

Under the circumstances, don't you agree with me that we could not afford to pay two commissions on an order which your firm had nothing to do with placing?

President."

JCE*T.

XVII.

The District Court erred in overruling the objection of this defendant to a letter offered in evidence by the United States addressed by Bennett Hardware Company to the Superior Portland Cement Company and the answer on the back of it, and in admitting said letter and answer in evidence and to be read to the jury. The substance of this letter

was in regard to the Crown Willamette Paper Company desiring several thousand barrels of cement for work at Camas, Washington, and that it was probable they would buy California cement in Portland using steamers from Portland, and the answer on the back of the letter, which letter is dated April 19, 1916, was to the effect that though Camas was regarded [771] in the territory of the Superior Portland Cement Company, the relations between some of the officers of the Crown Willamette Paper Company and the California companies were so friendly that they could not meet the situation. Said letters are marked Plaintiff's Exhibit 44.

XVIII.

The District Court erred in overruling the objection of this defendant to a letter written by the Santa Cruz Portland Cement Company, dated July 9, 1914, and in admitting said letter in evidence and to be read to the jury. The substance of the letter is a confirmation of verbal reduction making the price \$1.90 including sacks, ex dock, price to apply from day to day, job contracts closed at \$2.10 ex dock, and for 1915 delivery to be \$2.30 ex dock. This letter is marked Plaintiff's Exhibit 47.

XIX.

The District Court erred in overruling the objection of this defendant to a letter written by the witness Hacker to Fred R. Muhs, dated April 10, 1914, and in admitting said letter in evidence and to be read to the jury. The witness was the agent or dealer of the Santa Cruz Portland Cement Company at Tacoma, Washington. The substance of

this letter was to advise the California mills to put some cement into Puget Sound markets in order to take part in the fight then being carried on between two Washington companies, and also suggesting that the Washington companies were threatening to drive the California companies out of the Oregon market. This letter is marked Plaintiff's Exhibit 50. [772]

XX.

The District Court erred in overruling the objection of this defendant to a letter from the Olympic Portland Cement Company, signed Balfour-Guthrie, to F. T. Crowe & Company, dated July 17, 1914, quoting price of \$1.90 net less 15¢ commission, sacks extra, and in admitting this letter in evidence and to be read to the jury. This letter is marked Plaintiff's Exhibit No. 52.

XXI.

The District Court erred in overruling the objection of this defendant to a letter written by the Superior Portland Cement Company to F. T. Crowe & Company, of Tacoma, quoting \$1.90 net f. o. b. Seattle, dated July 17, 1914, and in admitting said letter in evidence and to be read to the jury. This letter is marked Plaintiff's Exhibit No. 54.

XXII.

The District Court erred in overruling the objection of this defendant to a letter written by the witness Hacker at Tacoma to Fred R. Muhs, of Seattle, dated July 23, 1914, and in admitting said letter in evidence and to be read to the jury. This letter acknowledges night letter received and states

that the witness is selling cement from day to day delivery at \$1.50 and upon future contracts at \$1.70, and is sending a copy of this letter to Portland. In this letter the witness adds that the people in Washington have seen some wisdom, and prices in Seattle, Portland, and Tacoma are \$1.90 firm, and that if the Washington mill would use policy which the witness had suggested to them these prices would stick. This letter is marked Plaintiff's Exhibit 55. [773]

XXIII.

The District Court erred in overruling the objection of this defendant to a letter dated August 27, 1914, marked Plaintiff's Exhibit 56, and in admitting this letter in evidence and to be read to the jury. This letter was written by the Superior Portland Cement Company at Seattle to F. T. Crowe & Company at Tacoma, and in substance it refers to a telephone conversation and states that the Washington cement manufacturers had agreed among themselves that a certain order referred to in the letter should come to the Superior Portland Cement Company, stating that the Superior was putting in a bid of \$1.85½, and Balfour-Guthrie & Company at \$1.90, and requesting Crowe & Company not to bid at all on this contract, or if they did bid to bid slightly above the Superior Portland Cement Company.

XXIV.

The District Court erred in overruling the objection of this defendant to a letter from Superior Portland Cement Company, dated Seattle, Decem-

ber 31, 1914, to Crowe & Company, of the same place, quoting price on cement effective January 1st \$1.90 net, no commission, and a second letter bearing the same date from Olympic Portland Cement Company to the same party to the same effect, and a further letter from the Olympic Portland Cement Company to the same party, dated Seattle, January 4, 1915, acknowledging the letter of Crowe & Company, dated January 2, 1915, and stating that program properly outlined and Olympic would sell in carload lots at \$1.90 to any consumer, leaving less than carload lots to dealers, and also a copy of the letter from Crowe & Company to the Olympic dated January 2, and also a letter from the Superior Portland Cement Company dated Seattle, January 12, 1915, to Crowe & Company, at Tacoma, requesting Crowe & Company to confine their sales to Tacoma and that the [774] Cement Company would appoint other agents at points outside of Tacoma, and that both other factories were adopting the same policy; and also a letter from the Superior Portland Cement Company, dated Seattle, February 23, 1915, to said Crowe & Company relating to the terms upon which its cement would be sold; and to admitting in evidence said letters and each of said letters and permitting the same and each of them to be read to the jury. Said letters form one exhibit marked Plaintiff's Exhibit No. 57.

XXV.

The District Court erred in overruling the objection of this defendant to certain letters offered

in evidence and to admitting said letters in evidence and to be read to the jury, which letters were offered as one exhibit and are as follows: Letter from the Superior Portland Cement Company, dated Seattle, January 13, 1916, to Crowe & Company, Tacoma, quotes price \$2.15 including sacks f. o. b. Tacoma, allowance $7\frac{1}{2}\text{¢}$ per sack; also letter from Superior Portland Cement Company, dated Seattle, January 13, 1916, to Crowe & Company, Seattle, quote \$2.30 f. o. b. Seattle, including sacks, sack allowance $7\frac{1}{2}\text{¢}$; and also a letter from Washington Portland Cement Company, dated Seattle, January 12, 1916, to Crowe & Company, Seattle, quotes price effective same date \$2.30 f. o. b. Seattle, including sacks, sack allowance $7\frac{1}{2}\text{¢}$; also letter Olympic Portland Cement Company, dated Seattle, January 11, 1916, to Crowe & Company, Seattle, quotes price \$2.30 f. o. b. Seattle, including sacks, sack allowance $7\frac{1}{2}\text{¢}$. Said letters offered as one exhibit marked Plaintiff's Exhibit No. 58. [775]

XXVI.

The District Court erred in overruling the objection of this defendant to a question propounded to the witness Hacker as follows:

“Why did the Standard and Santa Cruz Companies leave the State of Washington?”
and in permitting said question to be propounded and to be answered, and the answer to be submitted to the jury. This testimony was to the effect that before the Washington cement companies were started Washington and Oregon were dumping grounds for California companies; the California

companies selling into Montana and Idaho up to the point where they met eastern competition. When the Washington cement mills started, the California mills were restricted in territory where the Washington mills could supply cement cheaper by reason of freight rates. At that time the California companies were selling in eastern Washington as far as Spokane, freight rates being such that the Washington companies could not sell in eastern Washington. Afterwards eastern Washington mills were started and they crowded the California mills out of that territory, but Portland was the last place to which the California mills could ship as a dumping ground, and for this reason it was impossible to maintain prices because of conflict between the dealers; that the dealers were urging cement companies to get together and maintain prices; and as the California mills continued to sell in Washington there was a fight between all the mills.

XXVII.

The District Court erred in overruling the objection of this defendant to certain letters marked Plaintiff's Exhibit [776] 63 received by Galbraith Bacon & Company, of Seattle, from Superior Portland Cement Company, of Seattle, Washington Portland Cement Company, of Seattle, Olympic Portland Cement Company, of Seattle, all dated February 10, 1914, and giving the same price and commission to dealers; and in admitting said letters in evidence and to be read to the jury.

XXVIII.

The District Court erred in overruling the objection of this defendant to a letter identified by the witness Eden dated April 18, written by J. C. Eden to W. H. George, and a letter dated April 24 attached to the same, both offered in evidence together and marked Plaintiff's Exhibit 74, and the admission of said letters in evidence and the reading thereof to the jury. Said letters are as follows:

April 18, 1916.

"Dear Will:

Was mighty sorry on my visit to San Francisco last week not to have had time to have a few minutes talk with you, not only to speak about the Association, but to thank you personally for the wonderful party you gave us in San Francisco when I was there about two months ago.

Regarding the Association matters, I think your objection to any contribution in excess of $\frac{1}{4}\text{¢}$ per barrel was the same as my own, viz., that too much of the $\frac{3}{4}\text{¢}$ voted at the Association meeting in New York last December was to be divided to national advertising and to other uses that were of very doubtful value in our particular section of the country. I sincerely hope that you will be in accord with what all of those present at the meeting with Mr. Beck in San Francisco last week agreed to do. So far as the northwest is concerned, I am positive that the spending of [777] 80% of the $\frac{3}{4}\text{¢}$ per barrel contribution will be a very good in-

vestment, and will enable us to reduce a good share of the direct expense we have been put to in each individual company attempting its promotion work.

I don't know whether you formed as favorable an impression of Mr. Beck as I did, but he certainly strikes me as being the right man in the right place, and I hope that you will join the rest of us in lending him your heartiest co-operation.

With kindest regards, and hoping that I may see you again in a short time, I am,

Yours truly,

Mr. W. H. George, 2 Market street,
San Francisco, California."

"U. P. Co.	1916 May 15 A. M. 7:20	Received
President's Office	Ret'd	Portland Cement
1916, May 15 A. M. 8:32	Answ'd	Association
Ref'd to		May 15, 1916.
Answ'd		Noted BFA

HENRY COWELL LIME AND CEMENT CO.

2 Market street,

San Francisco, April 24, 1916.

Attention Mr. J. C. Eden.

Superior Portland Cement Company,
Seattle, Washington.

My dear Jack: Replying to yours of April 18, beg to advise that on April 20 I wired Mr. Beck as follows:

'We will stay with the Association under new plan until October 1, the date when the year that we joined for is up. We will then consider the matter again. Am afraid local competitors will not stop private promotion.'

At first I was not sure about Beck, but the more I [778] saw of him the more I liked him and am willing to play the string out for the term of our enlistment of one year from October 1, 1915, to October 1, 1916.

Altogether I am free to confess that I am not quite sure as to the advisability of all this. I feel as tho a company like our own could probably to better advantage as far as its own interests were concerned do its own promotion work, but I do realize that this looks like a selfish position, because if the others were all in the Association, promoting the Association work, we, of course, get some measure of benefit. This, at this time, is the real reason that keeps our company in the Association, with the further hope that during the balance of the time that we are-in, that things will develop so that all hands will see the advisability of a Coast Association, as I thoroughly believe in this. .

I hope before long to have an opportunity to discuss all of this personally with you.

Yours very truly,

W. H. GEORGE,
Secretary."

WHG-w.

XXIX.

The District Court erred in overruling the objection of this defendant to the introduction of certain papers identified by the witness Eden, marked Plaintiff's Exhibit 75, and to admitting said papers in evidence and to be read to the jury. These papers consist of telegrams passing between F. R.

Muhs and J. C. Eden, of Kenny & Eden, between said Eden and one Coats, the president of the Washington Portland Cement Company, and between J. G. Woodworth, Vice-president of the Northern Pacific Railroad Company, and said Eden; all of these papers [779] related to the proposed freight rates upon cement from the International Portland Cement Company to the City of Portland to enable said cement company to deliver its cement to Portland and fulfill the contract of the Pacific Bridge Company, and show the effort made by the Washington companies and representatives of the Superior, the Washington, and Olympic Cement Companies to prevent this rate being put in; and this defendant avers that the court erred in admitting said papers or any of them in evidence and in admitting the same or any of them to be read to the jury.

XXX.

The District Court erred in overruling the objection of this defendant to certain papers identified by the witness Eden and marked Plaintiff's Exhibit 76, and to admitting the said papers in evidence and to be read to the jury. Said papers consist of certain correspondence passing between Aman Moore and J. C. Eden, dated March 25, 1916, and relate to the manner of supervising paving work and contain the statement of Eden to the effect that inasmuch as his company would probably not participate in the cement business in Oregon, they could not see their way clear to assume any of the expense of promotion in Oregon.

XXXI.

The District Court erred in overruling the objection of this defendant to certain letters identified by the witness W. P. Cameron, to wit, a letter dated August 4, 1916, marked Plaintiff's Exhibit 78, and certain other papers offered therewith identified by said witness, marked Plaintiff's Exhibit 79, and in admitting said papers and letters in evidence and to be read to the jury. These letters consist of correspondence [780] passing between Foster & Company, of Hoquiam, and the Washington Portland Cement Company, Olympic Portland Cement Company and the Superior Portland Cement Company, of Seattle, dated in August and September, 1916. The substance of these letters was that Foster & Company were acting as dealers and distributors of the cement of all three Washington companies in Hoquiam and that vicinity, giving each of said companies a fair share of the tonnage and putting all three companies upon the same footing.

XXXII.

The District Court erred in overruling the objection of this defendant to a carbon copy of letter written by Tyler Henshaw to R. P. Butchart, marked Plaintiff's Exhibit 89, and in admitting said letter in evidence and to be read to the jury. Said letter is as follows:

September 24, 1914.

"Mr. R. P. Butchart,

Care Vancouver Portland Cement Company,
Victoria, B. C.

My dear Mr. Butchart: I have been trying very

hard to find an opportunity to run up to Victoria to see you for a day, but have found it utterly impossible this time. I wanted to talk to you about two things—both are of a very intimate nature, but on account of the very warm feeling that I have for you, and which I trust is to some extent reciprocated, I would not hesitate to talk or write you, but, of course, I would much prefer to talk to you.

The first is in regard to Carl Leonardt. He is a very peculiar man. He has, off and on, been trying to start a cement plant somewhere in Southern California. Why, I don't understand for he certainly knows the conditions as well as any man. Southern California is as much over-produced [781] as any other section of the coast. After many abortive efforts to find a property, he finally located one apparently and seemed to have started in seriously to interest capital in it. This property is located out on Cajon Pass on the Santa Fe Railroad. It is not particularly well located, being four or five miles from the railroad, in a desert section of the mountains, where it will be inevitably hard to keep men at work. He cannot produce his cement ever anywhere nearly as cheap as we are producing it, although we will concede him just as good a quality. Now he is attempting to go into an already overloaded market. I don't understand some people in this way, however, I want to make my story as short as possible.

He came to San Francisco about two months ago and called in to see me. I asked him if he intended to put up a plant on his property, and he said, yes.

Then I went over the matter very friendly, kindly way with him; told him what the situation was; how terribly over-burdened that section was with cement; how the mills already there would have to wait ten or fifteen years until the demand grew up to the present output. All of which seemed to make little impression, but finally I said to him,—Now, see here, Mr. Leonardt, we have been very loyal friends of yours; have given you your cement under the market right along; we have protected you in your business, and being a cement man, as you are, you are doing this with your eyes wide open, therefore, it is only fair for me to say to you this,—that we will not stand patiently by and see you put up another mill and add more trouble to our market. You have an indubitable right to put up a mill, but we have just as indubitable a right to protect our market, and the moment you put your cement on the [782] market we propose to put the price down where neither you nor ourselves can make any money, and we will continue it there.

Now, Mr. Butchart, I don't bluff. The situation there is so bad now with Colton and ourselves and the little Gordon state mill, that if Leonardt comes in with a mill, we might just as well start in and clean up the situation one time as another and let the man with the longest pole take the persimmon.

Loenardt thought this over and finally intimated that he thought I was about right in my attitude, and told me if I would come down in the course of five or six weeks we would go down to the property and sell it out to me. No price was agreed upon,

but he stated positively he would do so. I went down south, telephoned him, and he came over to Riverside. We took a machine and went out there, and after looking over the property I told him I was ready to buy it and to name his price and terms. He then began to shy and finally told me he would be up to San Francisco in about two weeks and would then settle the matter with me, which could only mean he would sell to me. I tried to urge him to close up then, but he would not do so, but he again promised that within two weeks he would be up and sell it to me, I even said to him,— You mean you will sell this property outright to me, and he said, Yes.

Now, he is keeping out of my way. There is no question in my mind that he is going to try to interest capital. I don't think anybody would be foolish enough, under the circumstances, to go into the proposition with him. Freights are against him and he can't manufacture as cheaply as we can. My honest belief is that we can make \$300,000.00 a year and keep him out of the market, or make him sell below cost. I may be wrong, but I firmly believe it and propose to tackle [783] it anyway if he bobs up.

Now, without betraying any confidence as far as Mr. Leonardt is concerned, can you tell me whether he said anything to you about his plans down here. If so, what they were and whether you inferred he was seriously contemplating putting up a mill. I know you will tell me whatever you can properly, and I don't ask of you anything that is not proper

for you to tell me, but whatever you do tell me will not go under any circumstances beyond my brother and myself.

Now, secondly: This must be considered by you as strictly confidential, but I am writing you personally so that you will have a full knowledge of the situation here in Oregon, and I am writing you only from that standpoint and because of my warm personal friendship.

I have bought a property here which I have been testing for something like a year. It is a property which, in combination with our clinker, makes a cement of a remarkably high type. In fact, Mr. Butchart, in many ways exceeds regular Portland cement. This property will enable me to put a cement on the market here at a cost of from 65¢ to 75¢ a barrel, not exceeding the latter price, and I think we can do it, after a year's run, under the former price. Mind you, I am only talking of prospects. We are testing the material carefully in all directions, putting it into walls; putting it into high-ways; testing it under most unfavorable conditions, and so far it has shown up wonderfully. I am perfectly candid, and always with you my cards are never anything but 'face up on the table.' I am not quite through with my experiments with this cement, but will have finished them within the next three or four months, and will have it in practical use unknown to anyone except a few engineers. [784] Within the next three or four months, I will have had over a year's full test upon the material, all compression and tension tests, etc., and

will be in position to know exactly what the material is. I shall put it on the market in Portland at not over, I think, \$1.25 a barrel, and some of it for mass work, harbor work, street work and the like, will be sold for probably \$1.00 to \$1.10 in this market.

Now, I have heard nothing further for many, many months about the prospects of this Portland Cement Company here. I have understood you are not interested in this company here any further, although my information, naturally, was not authentic, but anyway I want you to know privately and confidentially what my prospects are here so that at least if you were contemplating any movement in regard to this cement plant, you would have full knowledge for your own personal benefit of what my prospects were. The whole plant that I will put up will not cost over \$100,000.00, and my estimates already made and carefully checked do not exceed \$75,000 for a plant to produce safely 400,000 barrels per annum. I will say this further, that I do not expect to put on the market over 200,000 to 300,000 barrels per annum anyway, but *if* this cement turns out as every test shows it to, covering a period of eight months or more, and *if* I can produce it with as little original investment, and *if* this little affair starts in without a dollar of indebtedness of any sort, and *if* I can produce it at the price I have stated or lower, it would be a serious competitor for any cement mill to face.

If there is anything further you would particularly like to know about it, write me any question

and I will be glad to answer you fully. [785]

Regretting exceedingly that I did not find the time to run up and discuss these matters with you, and with warmest personal regards, I beg to remain

Yours very sincerely,

P. S.—In reading this letter over, while I have written it only from the friendliest motives, I fear it may sound to you in the nature of a possible menace. I hope you know me well enough to believe that nothing of the kind is intended. The reason that I am writing is feeling that as I have a warm personal friendship for you, it seemed only justice to that friendship to tell you confidentially the prospects that were before me in this market in the cement line. I can see no reason why there should not be room for us both and, as indicated, I do not intend to come in here and try to supply the entire market. In fact, I know perfectly well that it would be impossible for me to do so, but at the same time I hope you understand that I am only telling you of these prospects (of course they are as yet only prospects) that might to some extent militate against any program you had set out in this market, if you are still connected with the Portland Cement Company here. You know that you and I could work side by side in this market without any trouble. I feared you might, if I said nothing about this beforehand, feel that I had failed in the matter of friendship to you in not letting you know confidentially and beforehand.”

XXXIII.

The District Court erred in sustaining the objection of the United States to a certain letter identified by the [786] *by the* witness Aman Moore, written by Wirt Minor to Aman Moore, dated July 25, 1916, which letter is as follows:

July 25, 1916.

“Mr. Aman Moore,

Care Mr. Coy Burnett, Lewis Building,
Portland, Oregon.

Dear Sir: I am in receipt of communication dated July 24th addressed to the Directors of Oregon Portland Cement Company and signed by yourself, in which you demand that an immediate directors' meeting be called for the purpose of obtaining various data from the parties named; that is to say, Mr. R. P. Butchart, Mr. Newlands, Mr. Macdonald, Mr. Clark M. Moore, and Mr. Ballard, to the end that suit may be instituted under the Federal 'Treble Damage Statutes' for the damage sustained by the company through alleged illegal agreement on the part of the gentlemen above named. This matter was brought before the Board informally at its last meeting and you were requested by myself to state what action you desired to take, but for some reason you did not see fit to do anything whatever.

The by-laws of the corporation, Article IV, section 4, provide that

‘Special meetings of the board of directors shall be called by the Secretary when he is re-

requested so to do by the President, on three days' notice to each director."

Special meetings shall be called in like manner on request of a majority of the members of the board. You are aware that the president of the corporation is now absent. You yourself are one of its vice-presidents. Section 2 of Article VI of the by-laws provides that

'In the event of the absence of the president, one of the vice-presidents shall exercise the powers and perform the duties of the president [787] during such absence, subject to the advice and control of the board or of the executive committee.'

You, therefore, have it in your power to call this meeting and I shall be pleased to have you do so. If you are not willing to take the responsibility of calling the meeting I am perfectly willing to be one of the majority of the board to call such meeting. It will require this call to be signed by five of the directors. Mr. Butchart is away; Mr. Bates has tendered his resignation, and it has not been accepted as yet at your instance; Mr. Wilson has tendered his resignation, but the same has not yet been accepted; and Mr. Johnson is away. It will, therefore, be necessary for you to be one of the five directors to join in the call.

If you desire to have the meeting called as suggested and will come to my office I shall take the pleasure in preparing the call and in signing it. I do not know, however, whether Mr. Butchart and Mr. Newlands, who are charged by you with mal-

feasance in office, will consent to sign such call or not; if not, you will have to procure the signatures of Messrs. Wilson and Bates.

As Mr. Butchart and other directors are charged with malfeasance in office, I think it will be but reasonable that the meeting when called shall be called for such time as to give these parties an opportunity to attend and respond in person.

Yours very truly,

WIRT MINOR."

WM/R.

XXXIV.

The District Court erred in sustaining the objection of the United States to the introduction in evidence of the [788] letter offered by the defendants written by Wirt Minor to Aman Moore, dated August 29, 1916, and in refusing the said letter to be identified or introduced in evidence. This letter is as follows:

August 29, 1916.

"Mr. Aman Moore,
Oswego, Oregon.

Dear Sir: As one of the directors of the Oregon Portland Cement Company and as one of its general attorneys of counsel, I hereby demand that you afford me an opportunity to investigate the facts upon which the suit brought by you in the name of the Oregon Portland Cement Company is based. In connection with this demand I also demand that you afford me an opportunity to examine all the evidence from which these facts have been deduced or inferred.

I also desire you to advise me by what authority this action was commenced for, as you are aware, it was commenced without consulting the Board of Directors. I should be pleased to confer with your attorneys at any time regarding the matter and to examine the evidence in their office and to this end I am sending a copy of this letter to each of your attorneys of record.

I will add that I have been requested to take this step by several of the directors of the corporation.

Yours truly,

WIRT MINOR."

WM/MH.

XXXV.

The District Court erred in overruling the objection of this defendant to certain correspondence passing between [789] Carl Leonardt and the witness W. H. George, consisting of a letter from George to Leonardt, dated February 1, 1916, and the answer thereto, dated February 7, 1916, and the reply to said answer, dated February 8, 1916, all of which were offered as one exhibit and marked Plaintiff's Exhibit 105; and to the admission of said letters and each of them in evidence and to the reading of said letters and each of them to the jury. These letters are as follows:

(In pencil)

"L. B. 10/13/20.

HENRY COWELL LIME AND CEMENT CO.

2 Market Street.

San Francisco, February 1, 1916.

Mr. Carl Leonardt,

Care Southwestern Portland Cement Company,

H. W. Hellman Building, Los Angeles.

My dear Mr. Leonardt:

I arrived home safely and want to thank you for your very kind and courteous treatment when I was at Los Angeles. Please remember me kindly to Mr. Merrill and to Mr. Schirm.

I hope that by this time the get-together talk which I made it my particular business to give to all of those who are in the lime business is bearing fruit and that the conditions are better and settled.

I congratulate you on the layout and character of your cement plant and trust that when she begins operation you will find a ready market for a reasonable output, at the highest price, and under regular terms and conditions. [790]

Regarding regular terms and conditions, I enclose you herewith a little suggestion which I trust will be interesting. We have found it to work out to the best possible advantage here.

I hope to be able to write you in a few days that the allowance for returned empty sacks has been changed to 7½ cents.

Again thanking you, and conveying to you my best personal regards, I remain

Yours very truly,

W. H. GEORGE."

WHG-W.

"Monday, February 7, 1916.

(In pencil)

L. B. 10/13/20.

Mr. W. E. George, Secretary,

Henry Cowell Lime & Cement Company,

2 Market Street, San Francisco, California.

My dear George:

I received your letter of February first and thank you very much for the contents. That is the proper spirit! I refer to where you mention regarding our new cement plant that you 'trust when it begins operation we will find a ready market for a reasonable output,' etc.

Some of our cement manufacturers seem to think that no one else has a right to engage in the same business and manufacture and sell cement, which is entirely wrong as this is a free country and every man has a right to make an honest living, and any combine to ruin a competitor by misrepresentation and crookedness is wrong, which soon or late they will find out to their sorrow if they do not change their tactics.

You know a good neighbor cannot live in peace if the bad neighbor does not want him to. The Portland plant [791] as well as the Victorville plant wants to live in peace, but no man has a right to say that these plants have no right to manufacture

or sell cement. These plants only want their rights which they hope to obtain by peaceful and harmonious methods. Of course you know what it means to a large manufacturer as compared with one that has less capacity, when it comes to price cutting. I leave it to you to say who can stand it the longest.

I was in San Francisco last Saturday, leaving the same evening. I talked with your office, but you were at the factory. Mr. Butchart was with me and no doubt will write you from Del Monte. You can see him at any time and go into details with him, and should something of importance come up I will be willing to go to San Francisco at any time, Wishing you success, I am,

Yours very truly,

President."

"HENRY COWELL LIME & CEMENT CO.

2 Market Street.

San Francisco, February 8, 1916.

(In pencil)

L. B. 10/13/20.

Carl Leonardt, Esq.,

President, Southwestern Portland Cement Company,

710 H. W. Hellman Bldg., Los Angeles.

Dear Mr. Leonardt:

I am just in receipt of yours of February 7th, and hasten to reply.

I am willing to admit the truth of every word that [792] you say and you know how I feel

about these matters. I feel that that is exactly the way they should be carried out.

Undoubtedly by this time you have my other letter written from the plant on last Saturday.

At this writing I am at a loss to know where Mr. Butchart is. My understanding was that he was going to Los Angeles, probably with you from San Francisco, altho my first impression was that he was going direct to Los Angeles. I have written him in your care at Los Angeles and am now awaiting results as to whether it is best for me to go to Los Angeles, to see him at Del Monte when he goes there, or to await his arrival again at San Francisco.

When in Los Angeles I outlined to you what I wanted to say to Mr. Butchart, and I do hope that it will be agreeable and work to a satisfactory end. I shall be very glad indeed to advise you of all results.

Thanking you indeed for your many courtesies, I remain

Yours very truly,

W. H. GEORGE, Secretary."

WHG-W.

XXXVI.

The District Court erred in overruling the objection of this defendant to questions addressed to the witness W. D. Skinner, Traffic Manager of the Spokane, Portland & Seattle Railway, in regard to putting in a special rate on cement from Spokane to Portland in 1915 in order to get the haul of the

cement for the Interstate Bridge, and to admitting said evidence or any thereof. [793]

XXXVII.

The District Court erred in overruling the objection of this defendant to the introduction in evidence of a certain paper marked Plaintiff's Exhibit 151, and to admitting said paper in evidence and to be read to the jury. The said paper is as follows:

"S. P. & S. will publish rate 13½ cents on cement c/1 from Irwin, Washington, to Vancouver, Washington, and Portland, Oregon, if Irwin plant secures contract *secures contract* for interstate bridge cement. W. D. Skinner, F. T. M. Portland, Oregon, 3/6/15."

XXXVIII.

The District Court erred in overruling the objection of this defendant to a certain paper offered in evidence by the United States marked Plaintiff's Exhibit 152, and to admitting said paper in evidence and to be read to the jury. This paper is a letter from the International Portland Cement Company to W. D. Skinner, in which they state:

"Have not secured contract, please publish rate with least possible delay."

XXXIX.

The District Court erred in overruling the objection of this defendant to certain papers identified by the witness W. D. Skinner, marked Plaintiff's Exhibit 153, and in admitting said paper in evidence and to be read to the jury. Said papers were offered as one paper, and they consist of telegram

dated March 11, 1915, from the International Portland Cement Company to said Skinner, as follows:
[794]

“Did not receive copy of traffic, must have effected, earliest date.”

and the reply of said Skinner thereto as follows:

“Hands tied temporarily, will advise definitely few days.”

XL.

The District Court erred in sustaining the objection of the United States to a question propounded to the witness F. R. Muhs as follows:

Question: “Now, give the jury some idea of how profitable it has been, say how much money in proportion to the capital your mills have made?”

The witness had testified that the companies with which he was identified, the Santa Cruz Portland Cement Company and the Standard Portland Cement Company, after 1908 had made money, and the evidence sought to be elicited was for the purpose of showing that the amount of money made had been small as compared with the capital invested.

XLI.

The District Court erred in sustaining the objection of the United States to a question propounded to the witness F. R. Muhs, in which he was requested to tell the jury whether in his judgment, taking into consideration the cost of manufacturing and the freight which was paid on cement, the price

charged by his mills was or was not a reasonable price.

XLII.

The District Court erred in sustaining the objection of the United States to testimony by the defendants through the witness L. C. Newlands as to the reasonable cost [795] of putting up the mill of the Oregon Portland Cement Company in 1915 and 1916, which evidence was offered for the purpose of showing the cost of manufactured product, the defendants claiming that the cost or value of the factory is a proper element to take into consideration in ascertaining the cost of the manufactured product.

XLIII.

The District Court erred in the ruling of the Court excluding evidence offered by the defendants through the witness Ballard, that after he had made investigation into the affairs of the Oregon Portland Cement Company as vice-president and acting president of said corporation and had interviewed all the parties who were conducting the business of said corporation in order to ascertain whether or not the Oregon Portland Cement Company or its officers were violating the provisions of the law under which the indictment was found, that he found no evidence to sustain a charge of violation of this law, and in refusing to admit evidence to this effect.

XLIV.

The District Court erred in sustaining the objection of the United States to the following question

propounded to the witness Ballard by the attorneys for the defendants:

Question: "What did you do, Mr. Ballard, in order to ascertain the prices at which the Oregon Portland Cement Company's products were being sold?"

and erred in refusing said question to be answered and in refusing to allow the defendants to show by this witness the prices at which the Oregon Portland Cement Company's products were sold. [796]

XLV.

The District Court erred in sustaining the objection of the United States to the following question propounded to the witness Ballard:

Question: "And what, if anything, did he say to you with regard to prices at which the products of the mill were to be sold?"

and in refusing to permit the defendants to show what Clark Moore told Mr. Ballard, vice-president and acting president of the corporation, in regard to prices at which the products of the mill were sold. The testimony which was offered was for the purpose of showing that Clark Moore said nothing in regard to prices at which products of the mill were to be sold.

XLVI.

The District Court erred in overruling the objection of this defendant to the following question propounded to the witness H. S. McCracken:

Question: "At what price did you sell cement at that time?"

and erred in allowing said question to be answered.

The witness McCracken was a dealer in cement in the city of Portland; he had testified in regard to prices which he paid for cement to the Oregon Portland Cement Company and other cement manufacturers; and the testimony admitted was to the effect that he sold cement at \$2.30 because he could get no more for his cement than other companies could get, that the California companies were selling cement in Portland through their own selling agencies, and were selling to the public at \$2.30.

XLVII.

The District Court erred in sustaining the objection of the United States to the admission in evidence of a certain telegram [797] offered by the defendants addressed to R. P. Butchart and signed by Charles Boettcher, E. Prossett, and R. J. Morse, dated July 27, 1916. This telegram had been identified by the witness Wirt Minor as a telegram shown to him or read to him by Aman Moore at a meeting held in his office between Aman Moore, Clark M. Moore, representing Mr. Boettcher, and Harry Ross, representing Mr. Butchart. This telegram is as follows:

July 27, 1916.

“Mr. R. P. Butchart,

Vanderbilt Hotel, New York City.

We have inspected your plant here and have no criticism to make of Mr. Newlands management but on account of notoriety of lawsuit and damage to company would recommend Aman Moore be placed in charge of plant and quarries leaving sales as at present and that you wire Mr. Newlands

to resign and permit the election of some new member to Board of Directors. We have talked to a number of stockholders here and they are unanimous that settlement should be made with Moore to prevent notoriety and damage of his suit. Bank also refused to extend loan unless assured suit will not be brought. We have looked over figures in office and find we must have at once fifty thousand dollars more to meet pay rolls and bills. Wilcox will loan part if board is reorganized. If change meets with your approval will you kindly wire Teal and Minor attorneys and stockholders to call meeting and reorganize board and appoint Moore superintendent.

C. BOETTCHER.

R. J. MORSE.

E. POSSETT."

and erred in excluding said testimony. [798]

XLVIII.

The District Court erred in sustaining the objection of the United States to the admission in evidence of a telegram from the witness Clark M. Moore to Grant Fee and of a letter from Grant Fee to the witness. These papers were marked defendants' identifications 112 and 113 respectively, and were excluded by the ruling of the court. In substance they relate to the proposed visit of Clark M. Moore to San Francisco in August, 1916, and to a meeting which he wished to have with Grant Fee at that time with a view to selling him Oregon Portland cement for the erection of the Portland postoffice. The witness had testified in regard to

the purpose for which he had gone to California, and among other things he went there to see Mr. Fee to sell him if possible the cement for the Portland postoffice, for which said Fee had obtained a contract.

XLIX.

The District Court erred in sustaining the objection of the United States to certain telegrams offered in evidence by the defendants, marked defendants' identifications 114 and 115, and to the exclusion of said telegrams from the evidence by the ruling of the court. The witness Clark M. Moore had testified regarding a visit he made in August, 1916, to San Francisco, and among other objects of that visit was to see a Mr. Hiltz who was a representative of the Portland Cement Association on the Pacific coast with a view to having him come to Portland and arrange for an inspector on some road work which was being done to see that the work should be done according to specifications, and in connection therewith the defendants offered in evidence certain telegrams, as aforesaid, for the purpose of showing this to be, among [799] other things, his object in going to San Francisco.

L.

The District Court erred in overruling the objection of the defendant to excerpts from a letter written by the witness Clark M. Moore to Mr. Boettcher, dated May 18, 1916. This letter was written by Mr. Clarke M. Moore to Mr. Boettcher after a meeting of the Portland Cement Associa-

tion in Chicago, dated May 18, 1916, and said excerpts and letter are marked Plaintiff's Exhibit 163.

LI.

The District Court erred in that part of its charge to the jury as follows:

"It (the indictment) contains two counts; the first charges certain parties, managers, or representatives of cement manufacturing concerns in the states of Oregon, Washington, and California with entering into an unlawful combination or agreement in restraint of trade. . . . The second count charges the same parties by means of the same arrangement and combination, with monopolizing the trade in cement in these several states."

LII.

The District Court erred in that part of its charge to the jury as follows:

"Section II of the Act provides that every person who shall monopolize any part of the trade or commerce among the several states or with foreign nations, shall be guilty of a misdemeanor."

LIII.

The District Court erred in that portion of its charge to the jury as follows: [800]

"Now the second count of the indictment, as I have already said to you, charges the defendants with monopolizing the trade or commerce between the states, in violation of Section two of the Act, which provides that all

persons who shall monopolize or attempt to monopolize or combine with any person or persons to monopolize any part of the or commerce among the several states, shall be guilty of a crime. To constitute the offense of monopoly, under the Act, it is necessary to acquire exclusive right to such commerce by means which prevent others from engaging therein. The popular meaning of monopoly is the sole power of dealing in some particular commodity, in some particular market or place, or carrying on some particular business. Anything less than this is not a monopoly. The size of a business is not in itself a violation of this law. The act denounced by the statute is the certain and necessary prevention of other persons engaging in such business and thereby stifling or preventing competition. The evil against which the statute is directed is not the enlargement of the trade of one person, but the destruction of the trade of others, in some commodity. It is the suppression of competition by the unification of interest or management, or by agreement or concerted action. It signifies the combining or bringing together into the hands of one person, or group of persons, the control, or the power of control over a particular business or employment, so that competition may be suppressed by preventing others from engaging therein."

LIV.

The District Court erred in that part of its

charge to the jury relating to the Portland Cement Company prior to [801] the organization of the Oregon Portland Cement Company, and particularly to that portion as follows:

“There have been introduced in evidence some letters passing between Mr. Butchart and Mr. Aman Moore at a time prior to the date the Oregon corporation began marketing its products, and prior to the time that Clark Moore became connected with the concern.”

. . . . “They are, however, evidence against Mr. Butchart, and may be considered by you for the purpose of showing the conditions as they existed at the time Clark Moore became sales manager for the Oregon Company.”

LV.

The District Court erred in that portion of its charge to the jury as follows:

“Certain letters have also been introduced in evidence, written by Aman Moore and addressed to Mr. Butchart, which contain statements or suggestions concerning fixing prices or allotment of territory, by agreement with other manufacturers. The statements or suggestions contained in these letters are not evidence against Mr. Butchart, and do not tend to prove the connection of Butchart with any such agreement or combination, unless it appears that he acquiesced in the suggestion, or acted thereon, or combined with other manufacturers in accordance with the statements or suggestions so made by Moore.

Various letters have also been introduced written by officials, or associates of officials. of cement manufacturers in Washington and California, to defendants Clark Moore and Butchart. Any statements, suggestions, or requests [802] contained in any such letters are not to be taken or deemed as evidence of the guilt or innocence of the defendants Moore or Butchart, unless Butchart or Moore acquiesced in such statement and acted thereon, or combined with other cement manufacturers in accordance with the statements or suggestions made or contained in the letters, but these letters are part of the evidence, showing the relation existing between these people, and their conduct and actions, and for that purpose are competent and should be given such weight as you gentlemen may think they are entitled to,"

and the District Court erred particularly in that portion of the charge as follows:

" . . . but these letters are a part of the evidence, showing the relation existing between these people, and their conduct and actions, and for that purpose are competent and should be given such weight as you gentlemen may think they are entitled to."

LVI.

The District Court erred in its charge to the jury as follows:

"There has also been some testimony to the effect that charges of illegal combination were

made to the directors of the Oregon Company in June, 1916, and perhaps later. These charges culminated, as you will recall, in certain suits or actions brought by Aman Moore against certain officers or directors of the Oregon Company, and also resulted in the appointment of a stockholder committee, to investigate these charges. The opinion of this committee, or of any director, as to the truth of the charges, [803] is quite immaterial, and should be disregarded by you. The fact that such charges were made, however, may be considered by you in connection with the manner of conducting the business of the company, and you may compare what was done before and after the charges were made and these suits filed, if there was any change in the manner of doing business, in passing upon the guilt or innocence of the defendants; and it is for you to determine whether sales, if any, made in Washington, after the making of these charges, were designed or intended for the purpose of evading such charges."

and particularly the District Court erred in that portion of said charge as follows:

" . . . The fact that such charges were made, however, may be considered by you in connection with the manner of conducting the business of the company, and you may compare what was done before and after the charges were made and these suits filed, if there was any change in the manner of doing business, in

passing upon the guilt or innocence of the defendants; and it is for you to determine whether sales, if any, made in Washington, after the making of these charges, were designed or intended for the purpose of evading such charges."

LVII.

The District Court erred in that portion of its charge, which is as follows:

"Mr. Butchart, however, while upon the stand, testified that he did not make certain statements attributed to him by Aman Moore, but said nothing about the letters written [804] by him to Aman Moore; nor did he say anything about the meeting in San Francisco, referred to in these letters, nor offer any explanation of the letters, or any other statements contained therein. Now this was his privilege, and being a defendant he could not be required to say more if he did not desire to do so, nor could he be cross-examined as to matters not covered by the direct testimony, but upon passing upon the evidence in this case for the purpose of finding the facts, you have a right to take this omission of the defendant into consideration. A defendant is not required under the law to take the witness stand. He cannot be compelled to testify at all, and if he fails to do so no inference unfavorable to him may be drawn from that fact, nor is the prosecution permitted, in that case, to comment unfavorably upon the defendant's silence.

But where a defendant elects to come upon the witness stand and testify, he then subjects himself to the same ruling that apply to any other witness, and if he has failed to deny or explain acts of an incriminating nature that the evidence of the prosecution tends to establish against him, such failure may not only be commented upon, but may be considered by the jury with all the circumstances, in reaching their conclusion as to his guilt or innocence, since it is a legitimate inference that could he have truthfully denied or explained the incriminating evidence, if there is any against him, he would have done so."

and the District Court erred particularly in that portion of the charges as follows:

" . . . nor did he say anything about the meeting in San Francisco referred to in these letters." [805]

LVIII.

The District Court erred in that portion of its charge wherein the trial court instructed the jury in regard to certain letters written by Aman Moore to R. P. Butchart, and which contained statements or suggestions concerning fixing prices by allotting territory by agreement with other manufacturers, and particularly to that portion of the charge wherein the Court submitted to the jury said letters as evidence against the defendant R. P. Butchart, if

"it appears that he acquiesced in the sugges-

tions, or acted thereon, or combined with other manufacturers in accordance with the statements or suggestions.”

LIX.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“Portland cement is a mineral product. Certain earths or minerals, principally lime and clay, are mixed in specific proportions, fused by intense heat into a new uniform composition known as klinker and this klinker ground to an impalpable powder with certain ingredients added, is the Portland cement of commerce. It is sold by barrels, for in the earlier stages of the industry the containers were always wooden barrels. The net content of such barrel was 376 pounds of cement. In the later development of the industry the practice obtained and now rules upon the Pacific coast of packing the cement in sacks, each sack weighing 94 pounds. Thus, four of these sacks equal one barrel, but the sales are still in terms of barrels, and mill capacity is spoken of in terms of barrels. When of a given mill it is said that it has a capacity of 1,000 barrels, it means that working to capacity that mill can output 1,000 [806] barrels a day. In the sales of cement on the Pacific coast provision is usually made to compensate the ultimate purchaser for return of sacks in

good condition. In this regard the usual allowance is from $7\frac{1}{2}$ to 10 cents per sack.

To the successful manufacturer of cement a factory requires its limestone quarry and its clay deposit; the other ingredients, such as gypsum, etc., usually being purchased abroad. The rough material brought to the mill are subjected to a drying heat, to grinding to a given degree of fineness, to admixture in due proportions, and then to an intense heat in kilns. The product of this is known as klinker. The klinker marks the termination of the first stage in the production of cement. It may be heaped in piles and exposed to the air and improves, rather than deteriorates by this from the beneficial chemical changes which result from the action of the oxygen in eliminating the free lime which the klinker may contain. In the second process of manufacture the klinker is ground to an extreme fineness, thoroughly mixed with the minor ingredients and transported to the warehouse or packing house as the completed product ready for the market. The principal ingredients being furnished by the earth in a state of nature, the cost of these in their primitive state is not as a rule great. That cost is principally composed of the investment in mill machinery and of labor. The mill machinery is complicated and expensive—dryers, grinders, kilns, conveyors, etc. Much heat being necessary, the fuel item is an extremely heavy one. Owing to the nature of the process by

which cement is made and the necessary application of intense heat, the kilns and other machinery are subject to rapid deterioration in use. The life of a cement mill in operation is ten years, or in other words [807] the necessary renewals and replacements have in ten years substituted a completely new set of machinery for the original."

LX.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Portland cement is an article of commerce and under the law must be tested before it is placed upon the market, and any brand of Portland cement which stands these tests and fulfills the requirements of the law can be used in all work in which Portland cement is used."

LXI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Every manufacturer has the right to ascertain in any legitimate way the price at which goods manufactured by others and competing with the product of his mills are sold. Competing manufacturers issuing price lists from time to time may legally exchange their respective price lists. Competing manufacturers may lawfully advise one another of the territory in which their manufactured products are marketed and may lawfully

advise one another of the prices at which their respective products are put upon the market. Giving and receiving such information is not forbidden by law."

LXII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"It is therefore a natural conclusion that the mere fact that a manufacturer of Portland cement in the State of California, Oregon, and Washington may have issued from time to time price lists or circulars stating the price at which and terms on which the product of his factory would be sold and that a similar price list or circular [808] letter may have been issued by some or by all other manufacturers of Portland cement in said states and that in all of said price lists or circular letters issued at or about the same time the price of Portland cement is the same and the terms of sale the same, will not in itself constitute a violation of the statute or be in contravention of the law, nor can you find the defendants guilty upon evidence of this character alone even though you should find that every manufacturer sold his product at the same price and upon the same terms. To constitute a violation of the law, there must also be evidence which satisfies your minds beyond a reasonable doubt that such prices or terms were fixed by agreement or combination between the several

manufacturers and that defendants Butchart and Moore were parties to such agreement or combination.”

LXIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“Every manufacturer of Portland cement has the legal right to determine from time to time the territory in which, the parties to whom, the prices at which, and the manner in which the product of his factory shall be sold. He may also issue price lists or circulars and employ any other method which he may desire to advertise or sell the product of his mill. Such conduct is not a violation of the statute under which the defendants are indicted or in contravention of any law.”

LXIV.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows: [809]

“Every commodity such as Portland cement is under normal business conditions put upon the market for sale and sold and the average price at which such commodity is sold is commonly designated as the market or market price. Under normal conditions Portland cement is sold in this manner and the price at which it is so sold from time to time would constitute the market price at the time. Such market price naturally changes from time to

time due to cost of manufacture, cost of transportation, supply and demand, and to other causes too numerous to enumerate. Each sale affects and therefore each manufacturer in offering and selling his factory's output necessarily contributes to making the market price and, of course, such action on his part is not in violation of the law. It is only the making or fixing of the market price by agreement, combination, or conspiracy with other manufacturers which is prohibited, so that if you are not satisfied by the evidence beyond a reasonable doubt that either of the defendants, **Butchart** or **Moore**, as officers or agents of Oregon Portland Cement Co., did agree or combine or conspire with other manufacturers of Portland cement in the states above mentioned to make or fix the market price for Portland cement or agree or combine or conspire with other manufacturers to limit the territory in which Oregon Portland Cement Company should sell its products or agree or combine or conspire with other manufacturers to limit the territory or fix the price at which the products of the mill of some other manufacturers should be sold, you must return a verdict of not guilty."

LXV.

The District Court erred in refusing to charge the [810] jury as duly requested by this defendant in writing, as follows:

“I have permitted the government to introduce evidence tending to show that in 1915 the Spokane, Portland & Seattle Railway Company promised to reduce its freight charges upon Portland cement from Irwin, Washington, to Portland, Oregon, and Vancouver, Washington, and that the Western Washington Cement Manufacturers and some of the Northern California Cement Manufacturers combined to defeat such proposed change in the freight rate and that they succeeded in defeating the same by promising to supply cement from their mills for the Interstate Bridge at the price at which cement for this purpose was offered by the Irwin plant if the rate had been installed. Such action on the part of the Western Washington and California manufacturers, if proven to your satisfaction, would not constitute a violation of the statute on which this indictment is based.”

LXVI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“There is a distinction between restraint of competition and restraint of trade. The latter expression had, when the anti-trust act was passed, a definite legal signification. Not every combination in restraint of competition is in restraint of trade. But it does not necessarily follow that restraint of competition is a restraint of interstate trade and commerce. The

determination of whether it be so must depend upon the facts and circumstances of each individual case. It is undoubtedly the policy of the statute that competitive conditions in interstate trade should be [811] maintained wherever their abolition would tend to suppress or diminish interstate trade. But this being true does not read into the statute a denunciation of all agreements that may restrain competition without regard to their purpose or direct effect to restrain 'trade or commerce among the several states.' To what extent the anti-trust act condemns combinations that restrain full and free competition in interstate trade is a question that has been much debated, and it has been settled that it does not condemn combinations which only indirectly, remotely, or incidentally restrain interstate trade.

The language of the anti-trust act is not to receive that literal construction which will impair rather than enhance freedom of interstate commerce. Restraint of interstate trade and restraint of competition in interstate trade are not interchangeable expressions. There may be, under the anti-trust act, restraint of competition that does not amount to restraint of interstate trade."

LXVII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“Even if you are satisfied from the evidence that there was an agreement or conspiracy or combination or a concert of action among the manufacturers of Portland cement in the states above mentioned to define the territory in which or the prices at which the product of the several factories or mills should be sold, yet such agreement, conspiracy, or combination is not necessarily within the prohibition of the statute, for to constitute a violation [812] of the statute you must also be satisfied from the evidence beyond a reasonable doubt that said manufacturers thereby intended to restrain interstate commerce in cement in the market for Portland cement to an unreasonable degree or that interstate commerce in cement was thereby restrained to an unreasonable extent.”

LXVIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“It is entirely lawful for anyone to do what he can to prevent a transportation company from putting in a freight rate which he may deem unjust and discriminatory, and which he may think will injuriously and unjustly affect his business. Any number of persons who may be similarly situated may join in opposing the installation of such freight rate. It is in evidence that the Western Washington Cement Manufacturers and some of the Northern Cali-

ifornia Cement Manufacturers combined in 1915 to defeat a proposed change or reduction in the freight rate on cement from Irwin, Washington, to Portland, Oregon, and Vancouver, Washington, but this action on their part was legitimate and lawful, and does not constitute any violation of the Sherman Act."

LXIX.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Manufacturers of Portland cement may lawfully ascertain the markets or territories in which and the price or prices at which other manufacturers of Portland cement sell or market their products, and having this information or [813] knowledge may use the same in marketing their own product so long as they do not agree or combine or conspire with such other manufacturers, but act independently of them. It is only actions taken by agreement or combination or conspiracy with other manufacturers which the law prohibits."

LXX.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"The indictment charges that an agreement, combination, or conspiracy was entered into between certain parties representing certain manufacturers of Portland cement in the states

of California, Oregon, and Washington to control or limit the territory in which the output of the several factories should be marketed and to fix the prices at which it should be sold and that defendants Butchart and Moore as the officers and agents of Oregon Portland Cement Company were parties to or became parties to such agreement, combination, or conspiracy, and that such agreement, conspiracy, or combination was entered into for the purpose of restraining interstate commerce in Portland cement in said states and that such interstate commerce was thereby actually restrained. Before you can find either of the defendants Butchart or Moore guilty, you must therefore find or be satisfied by the evidence beyond a reasonable doubt, first, that such agreement, conspiracy, or combination was entered into by the defendants named in the indictments or by some of them; second, that such agreement, conspiracy, or combination was entered into for the purpose of restraining interstate commerce in Portland cement in said states; third, that it did restrain or [814] restrict such commerce; fourth, that the defendant or defendants Butchart and Moore were parties to or became parties to such agreement, conspiracy, or combination; fifth, that the defendant or defendants Butchart and Moore were parties to or became parties to said agreement, conspiracy, or combination as officers or agents of Oregon Portland Cement Company; and, sixth,

that interstate commerce in said states in Portland cement would necessarily be restrained or was actually restrained by said alleged agreement, conspiracy, or combination to an unreasonable extent or degree. If you find that one of the defendants Butchart or Moore was not a party to such agreement, combination, or conspiracy, you must find him not guilty, and if you find that neither of the defendants Butchart or Clark M. Moore was a party thereto, you must return a verdict of not guilty in favor of each of said defendants.”

LXXI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“There is no evidence in this case which tends to show that either R. P. Butchart or Clark M. Moore monopolized or attempted to monopolize the trade or commerce in Portland cement among the states or combined with any person or persons to monopolize any part of the trade or commerce in Portland cement among the several states. You will therefore return a verdict in their favor in the second count of the indictment.”

LXXII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows: [815]

“The evidence before you is not sufficient to establish the guilt of the defendant R. P.

Butchart and you are hereby directed to return a verdict in his favor of Not Guilty."

LXXIII.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"The evidence before you is not sufficient to establish the guilt of the defendant Clark M. Moore and you are hereby directed to return a verdict in his favor of Not Guilty."

LXXIV.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

"Certain letters have been introduced, written by Aman Moore and addressed to R. P. Butchart, which contain statements or suggestions concerning the fixing of price, the allotment of territory, or agreements with other manufacturers. I instruct you that statements or suggestions made by Aman Moore recited or contained in such letters are not evidence against said Butchart and do not tend to prove the connection of said Butchart with any such agreements or combinations, unless it be further shown independent of such statements or suggestions so made by said Aman Moore and contained in said letters, that said Butchart acquiesced in said statements and acted thereon or combined with other cement manufacturers in accordance with the state-

ments or suggestions so made by said Aman Moore and contained in said letters.”

LXXV.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows: [816]

“Letters have been admitted in evidence written by Aman Moore to R. P. Butchart, and by R. P. Butchart to Aman Moore, dated prior to April 14, 1916, the date upon which Clark Moore was selected or appointed Sales Manager for the Oregon Portland Cement Company. Any statements contained in such letters or correspondence are not evidence for or against Clark Moore, unless you should find that such letters show a combination, conspiracy, or agreement as charged in the indictment, and that after Clark Moore became Sales Manager of the Oregon Portland Cement Company on April 14, 1916, he acted in furtherance of such combination or conspiracy and aided, abetted, or assisted in carrying out and performing the agreements so made.”

LXXVI.

The District Court erred in refusing to charge the jury as duly requested by this defendant in writing, as follows:

“Various letters have been introduced, written by officials or associates of officials from cement manufacturers in Washington and California to defendants Clark Moore and R. P. Butchart. I instruct that any statements, sug-

gestions, or requests contained in such letters are not to be taken or deemed as evidence of the guilt or innocence of defendants R. P. Butchart and Clark Moore, unless it be further shown by evidence independent of the statements contained in such letters that defendants, Butchart or Clark Moore, acquiesced in such statements and acted thereon or combined with other cement manufacturers in accordance with the statements or suggestions so made or contained in said letters.”

LXVII.

The District Court erred in overruling and denying [817] the motion and application of this defendant to set aside the verdict of the jury returned in this cause and grant a new trial to this defendant and in refusing to set aside said verdict and grant a new trial to this defendant.

CLARK M. MOORE,
By WIRT MINOR,
One of His Attorneys.

TEAL, MINOR & WINFREE,
WIRT MINOR,
A. B. WINFREE,

Attorneys for Defendant, Clark M. Moore.

Service of the within assignment of errors and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney.
Of Attorneys for Defendant in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on Thursday, the 18th day of August, 1921, the same being the 40th judicial day of the regular July term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [819]

In the District Court of the United States for the District of Oregon.

No. C—7308.

UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HENSHAW,
GEORGE T. CAMERON, FRED H. MUHS,
JOHN C. EDEN, A. A. SUTHERLAND,
A. F. COATS, ALEXANDER BAILLIE,
W. P. CAMERON, R. P. BUTCHART,
and CLARK M. MOORE,

Defendants.

Order Allowing Writ of Error, Staying Proceedings and Fixing the Amount of Bond.

R. P. Butchart, defendant in the above-entitled cause, having filed in this court a petition for an order allowing a writ of error in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit and staying proceedings upon the judgment heretofore entered in this cause upon

the verdict of the jury duly returned and filed in this cause until the determination of said writ of error, and the said petition coming on at this time to be heard upon the motion of the said R. P. Butchart, and it appearing to the Court that the said defendant R. P. Butchart has heretofore filed a petition for such writ of error and therewith an assignment of errors, and the Court being fully advised in the premises, it is considered, ordered, adjudged, and decreed that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore rendered and entered in this court and in this cause on the 23d day of February, 1921, against the said R. P. Butchart upon said verdict, and it is further considered, ordered, adjudged, and decree that upon the giving by the said defendant R. P. Butchart of security, with proper surety or sureties, acceptable to this Court, in the amount of eight thousand dollars (\$8000.00), the proceedings of this court be suspended and stayed until the determination [819½] of such writ of error by said United States Circuit Court of Appeals for the Ninth Circuit.

Done and dated in open court this 18th day of August, 1921.

R. S. BEAN,
District Judge.

Service of the within order and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney,
Of Attorneys for Defendant in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.
[820]

AND AFTERWARDS, to wit, on Thursday, the 18th day of August, 1921, the same being the 40th judicial day of the regular July term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [821]

In the District Court of the United States for the
District of Oregon.

C—7308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HEN-
SHAW, GEORGE T. CAMERON, FRED
H. MUHS, JOHN C. EDEN, A. A. SUTH-
ERLAND, A. F. COATS, ALEXANDER
BAILLIE, W. P. CAMERON, R. P. BUT-
CHART, and CLARK M. MOORE,

Defendants.

**Order Allowing Writ of Error, Staying Proceed-
ings and Fixing the Amount of Bond.**

Clark M. Moore, defendant in the above-entitled
cause, having filed in this court a petition for an

order allowing a writ of error in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit and staying proceedings upon the judgment heretofore entered in this cause upon the verdict of the jury duly returned and filed in this cause until the determination of said writ of error, and the said petition coming on at this time to be heard upon the motion of the said Clark M. Moore, and it appearing to the Court that the said defendant Clark M. Moore has heretofore filed a petition for such writ of error and therewith an assignment of errors, and the Court being fully advised in the premises, it is considered, ordered, adjudged, and decreed that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore rendered and entered in this court and in this cause on the 23d day of February, 1921, upon said verdict on said 23d day of February, 1921, against the defendant Clark M. Moore, and it is further considered, ordered, adjudged, and decreed that upon the giving by the said defendant Clark M. Moore of security, with proper surety or sureties, acceptable to this Court in the amount of five thousand dollars (\$5,000.00), the proceedings of this court be suspended and stayed until the determination [822] of such writ of error by said United States Circuit Court of Appeals for the Ninth Circuit.

Done and dated in open court this 18th day of August, 1921.

R. S. BEAN,
District Judge.

Service of the within order and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,

Assistant United States Attorney,
Of Attorneys for Defendant in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.
[823]

AND AFTERWARDS, to wit, on Thursday, the 18th day of August, 1921, the same being the 40th judicial day of the regular July term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [824]

In the District Court of the United States for the
District of Oregon.

C—7308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM, R. B. HENDERSON, FRANK W. ERLIN, WILLIAM G. HENSHAW, TYLER HENSHAW, GEORGE T. CAMERON, FRED H. MUHS, JOHN C. EDEN, A. A. SUTHERLAND, A. F. COATS, ALEXANDER BAILLIE, W. P. CAMERON, R. P. BUTCHART, and CLARK M. MOORE,

Defendants.

Order Fixing Amount of Supersedeas Bond.

The defendants, R. P. Butchart and Clark M. Moore, having sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit and application having been made to fix the amount of the supersedeas bond in order that proceedings may be stayed pending judgment of the said Circuit Court of Appeals: It is hereby ORDERED that the amount of the supersedeas bond to be given by the defendant R. P. Butchart be and the same is hereby fixed in the sum of eight thousand dollars (\$8,000.00), and that the amount of the supersedeas bond to be given by the defendant Clark M. Moore be and the same is hereby fixed at the sum of five thousand dollars (\$5,000.00).

Dated this 18th day of August, 1921.

R. S. BEAN,
District Judge.

Service of the within order and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney,
Of Attorneys for Defendant in Error.

Filed August 18, 1921. G. H. Marsh, Clerk.
[825]

AND AFTERWARDS, to wit, on the 19th day of August, 1921, there was duly filed in said court a bond on writ of error of R. P. Butchart, in words and figures as follows, to wit: [826]

In the District Court of the United States for the
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HEN-
SHAW, GEORGE T. CAMERON, FRED
H. MUHS, JOHN C. EDEN, A. A. SUTH-
ERLAND, A. F. COATS, ALEXANDER
BAILLIE, W. P. CAMERON, R. P. BUT-
CHART, and CLARK M. MOORE,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
That I, R. P. Butchart, as principal, and United
States Fidelity and Guaranty Company, of Balti-
more, Maryland, as surety, are held and firmly
bound unto the United States of America, in the sum
of Eight Thousand Dollars (\$8,000.00), lawful money
of the United States of America for the payment of
which sum well and truly to be made we and each
of us hereby bind ourselves, our successors, and
assigns, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of
August, 1921.

The condition of this obligation is such that:

Whereas the above-named R. P. Butchart
has sued out a writ of error in the United States
Circuit Court of Appeals for the Ninth Circuit,

to bring up for review before said United States Circuit Court of Appeals for the Ninth Circuit a judgment rendered by the District Court of the United States for the District of Oregon upon a verdict in the above-entitled cause, and

Whereas said R. P. Butchart has prayed for a reversal by said United States Circuit Court of Appeals for the Ninth [827] Circuit of said judgment rendered by the said District Court of the United States for the District of Oregon, and desires a stay of proceedings in said District Court of the United States for the District of Oregon until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit:

Now, therefore, if said R. P. Butchart shall prosecute his writ of error to effect, and answer all damages and costs that may be awarded against him if he fail to make his plea good, including just damages for delay and costs and interest on said writ of error, then the above obligation to be void, otherwise to remain in full force and virtue.

R. P. BUTCHART.

By WIRT MINOR,

One of His Attorneys.

UNITED STATES FIDELITY AND
GUARANTY COMPANY.

(Seal)

By H. WESTENFELDER,

Its Attorney in Fact.

Countersigned: J. L. HARTMAN COM-
PANY.

By H. WESTENFELDER,

General Agents.

Approved, August 19, 1921.

R. S. BEAN,
Judge.

Service of the within bond and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney,
Of Attorneys for Defendant in Error.

Filed August 19, 1921. G. H. Marsh, Clerk.
[828]

AND AFTERWARDS, to wit, on the 19th day of August, 1921, there was duly filed in said court a bond on writ of error of Clark M. Moore, in words and figures as follows, to wit: [829]

In the District Court of the United States for the
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HENSHAW,
GEORGE T. CAMERON, FRED H. MUHS,
JOHN C. EDEN, A. A. SUTHERLAND,
A. F. COATS, ALEXANDER BAILLIE,
W. P. CAMERON, R. P. BUTCHART, and CLARK M. MOORE,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That I, Clark M. Moore, as principal, and United States Fidelity and Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto the United States of America, in the sum of Five Thousand Dollars (\$5,000.00), lawful money of the United States of America, for the payment of which sum well and truly to be made we and each of us bind ourselves, our successors, and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of August, 1921.

The condition of this obligation is such that:

Whereas the above-named Clark M. Moore has sued out a writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, to bring up for review before said United States Circuit Court of Appeals for the Ninth Circuit a judgment rendered by the District Court of the United States for the District of Oregon upon a verdict in the above-entitled cause, and

WHEREAS said Clark M. Moore has prayed for a reversal by said United States Circuit Court of Appeals for the Ninth [830] Circuit of said judgment rendered by the said District Court of the United States for the District of Oregon, and desires a stay of proceedings in said District Court of the United States for the District of Oregon until the determination of said writ of error by said

United States Circuit Court of Appeals for the Ninth Circuit:

Now, therefore, if said Clark M. Moore shall prosecute his writ of error to effect, and answer all damages and costs that may be awarded against him if he fail to make his plea good, including just damages for delay and costs and interest on said writ of error, then the above obligation to be void, otherwise to remain in full force and virtue.

CLARK M. MOORE.

By WIRT MINOR,

One of His Attorneys.

UNITED STATES FIDELITY AND
GUARANTY COMPANY.

(Seal)

By H. WESTENFELDER,

Its Attorney in Fact.

Countersigned: J. H. HARTMAN & COMPANY.

By H. WESTENFELDER,

General Agents.

Approved, August 19, 1921.

R. S. BEAN,

Judge.

Service of the within bond and receipt of a copy is hereby admitted this 18th day of August, 1921.

HALL S. LUSK,

Assistant United States Attorney,
Of Attorneys for Defendant in Error.

Filed August 19, 1921. G. H. Marsh, Clerk.

[831]

AND AFTERWARDS, to wit, on the 25th day of August, 1921, there was duly filed in said court a praecipe for transcript, in words and figures as follows, to wit: [832]

In the District Court of the United States for the
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff, .

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,
R. B. HENDERSON, FRANK W. ERLIN,
WILLIAM G. HENSHAW, TYLER HEN-
SHAW, GEORGE T. CAMERON, FRED H.
MUHS, JOHN C. EDEN, A. A. SUTHER-
LAND, A. F. COATS, ALEXANDER BAIL-
LIE, W. P. CAMERON, R. P. BUTCHART,
and CLARK M. MOORE,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of the District Court of the United
States for the District of Oregon:

You are hereby requested to prepare record in
the above-entitled cause for the United States
Circuit Court of Appeals for the Ninth Circuit,
said record to contain and consist of the following
instruments:

1. The indictment.
2. The demurrer to the indictment of the de-
fendants R. P. Butchart and Clark M. Moore.

3. The opinion of the Court overruling the demurrer to the indictment.
4. Pleas or plea of each of the several defendants indicted.
5. The judgment of the Court against each of the defendants, who subsequently entered pleas of guilty.
6. The verdict of the jury against R. P. Butchart and Clark M. Moore.
7. The motion and application to set aside the verdict and grant a new trial.
8. The opinion of the Court overruling the application and motion of the defendants R. P. Butchart and Clark M. Moore to set aside the verdict and grant a new trial. [833]
9. The bill of exceptions.
10. All stipulations between counsel.
11. All orders made upon stipulation.
12. All orders extending time.
13. The judgment of the Court against defendants R. P. Butchart and Clark M. Moore.
14. The petition for writ of error of R. P. Butchart.
15. The assignment of error of R. P. Butchart.
16. The petition of Clark M. Moore for a writ of error.
17. The assignment of errors of Clark M. Moore.
18. The order providing for supersedeas bond.
19. The order allowing writ of error to R. P. Butchart.

20. The order allowing writ of error to Clark M. Moore.

21. The supersedeas bond of R. P. Butchart.

22. The supersedeas bond of Clark M. Moore.

WIRT MINOR,

Of Attorneys for the Defendants R. P. Butchart
and Clark M. Moore.

Service of the within praecipe and receipt of a copy is hereby admitted this 25th day of August, 1921.

HALL S. LUSK,
Assistant United States Attorney,
Of Attorneys for Defendant in Error.

Filed August 25, 1921. G. H. Marsh, Clerk.
[834]

AND AFTERWARDS, to wit, on the 1st day of May, 1922, there was duly filed in said court, a designation by defendants of exhibits to be included in bill of exceptions, in words and figures as follows, to wit: [835]

In the District Court of the United States for the
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. P. BUTCHART, CLARKE M. MOORE, et al.,
Defendants.

Designation by Defendants of Exhibits to be Included in Bill of Exceptions.

Mr. G. H. Marsh, Clerk of the Above-entitled Court:

In accordance with stipulation heretofore filed herein, you are hereby requested to attach to transcript as part of the bill of exceptions copy of each of the following exhibits, to wit:

Plaintiff's Exhibits Nos. 40, 50, 52, 74, 76, 78, 79, 80, 98, 105, 131 and 142; Defendants' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 28, 29, 96, 97 and 117.

Very truly yours,

TEAL, MINOR & WINFREE.

Designation of exhibits to be copied—1.

Filed May 1, 1922. G. H. Marsh, Clerk. [836]

AND AFTERWARDS, to wit, on the 24th day of July, 1922, there was duly filed in said court a designation by plaintiff of exhibits to be included in bill of exceptions, in words and figures as follows, to wit: [837]

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA

vs.

S. H. COWELL et al.,

Defendants.

Designation by Plaintiffs of Exhibits to be Included in Bill of Exceptions.

To G. H. Marsh, Clerk of the Above-entitled Court:

Under paragraph four of stipulation dated April 29, 1921, the following exhibits are designated to be printed as a part of the transcript of record upon the writ of error herein, to wit:

Plaintiff's Exhibits Nos. 20, 31, 33, 39, 45, 51, 55, 56, 57, 59, 61, 62, 68, 70, 72, 73, 75, 78, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 103, 104, 116, 117, 119, 138, 145, 146, 147, 148, 151, 152, 153, 163.

LESTER W. HUMPHREYS,
United States Attorney,

Filed July 24, 1922. G. H. Marsh, Clerk. [838]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing writs of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from 5 to 838, inclusive, constitute the transcript upon writs of error in a cause in said court, in which the United States of America is plaintiff and defendant in error, and R. P. Butchart and Clark M. Moore are defendants and plaintiffs

in error; that the said transcript has been prepared by me in accordance with the praecipe filed by said plaintiffs in error, the orders of said Court and notices by the parties hereto, and the said transcript is a full, true and complete transcript of the record and proceedings which the said praecipe, orders of Court and notices designated to be included therein, as the same appear of record and on file at my office and in my custody.

And I further certify that I return with the said transcript of record attached, the original writ of error issued upon the petition of the plaintiff in error R. P. Butchart and original writ of error issued upon the plaintiff in error Clark M. Moore and the original citations filed in said cause; and I further certify that the cost of the foregoing transcript is \$240.70, and that the same has been paid by the said plaintiff in error.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said court at Portland in said District this 26th day of August, 1922.

[Seal]

G. H. MARSH,

Clerk. [839]

[Endorsed]: No. 3919. United States Circuit Court of Appeals for the Ninth Circuit. R. P. Butchart and Clark M. Moore, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error

to the United States District Court of the District of Oregon.

Filed August 29, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the
District of Oregon.

No. C—7308.

August 30, 1921.

THE UNITED STATES OF AMERICA

vs.

R. P. BUTCHART, CLARK M. MOORE.

Order Extending Time to and Including November 1, 1921, to File Record and Docket Cause.

Now, at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record in the above-entitled cause and docketing the cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including November 1, 1921.

R. S. BEAN,
Judge.

[Endorsed]: No. 3919: United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to

and Including Nov. 1, 1921, to File Record and Docket Cause. Filed Sept. 2, 1921. F. D. Monckton, Clerk. Refiled Aug. 29, 1922. F. D. Monckton, Clerk.

In the District Court of the United States for the District of Oregon.

No. 7308.

October 31, 1921.

UNITED STATES OF AMERICA

vs.

R. P. BUTCHART and CLARK M. MOORE,
Defendants.

Order Extending Time to and Including December 15, 1921, to File Record and Docket Cause.

Now at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record in the above-entitled cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including December 15, 1921.

CHAS. E. WOLVERTON,
Judge.

[Endorsed]: No. 3919. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Dec. 15, 1921, to File Record and Docket Cause. Filed Dec. 8, 1921. F. D. Monck-

ton, Clerk. Refiled Aug. 29, 1922. F. D. Monckton,
Clerk.

In the District Court of the United States for the
District of Oregon.

No. C—7308.

December 6, 1921.

UNITED STATES OF AMERICA

vs.

R. P. BUTCHART and CLARK M. MOORE.

**Order Extending Time to and Including February
15, 1922, to File Record and Docket Cause.**

Now, at this day, comes the plaintiff by Mr. Lester W. Humphreys, United States Attorney, and the defendants above named by Mr. A. B. Winfree, of counsel, whereupon on motion of said defendants, the United States Attorney consenting thereto, IT IS ORDERED that the time for filing the transcript of record upon writ of error in the above cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit be, and same is hereby, extended to and including February 15, 1922.

R. S. BEAN,
Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Feb. 15, 1922 to File Record and

Docket Cause. Filed Dec. 8, 1921. F. D. Monckton, Clerk. Refiled Aug. 29, 1922. F. D. Monckton, Clerk.

In the District Court of the State of Oregon for
the District of Oregon.

February 10, 1922.

THE UNITED STATES OF AMERICA

vs.

R. P. BUTCHART and CLARK M. MOORE.

**Order Extending Time to and Including March 31,
1922, to File Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record on writ of error in the above-entitled cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby, extended to and including March 31st, 1922.

R. S. BEAN,
Judge.

[Endorsed]: No. 3919. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Mar. 31, 1922, to File Record and Docket Cause. Filed Apr. 19, 1922. F. D. Monckton, Clerk. Refiled Aug. 29, 1922. F. D. Monckton, Clerk.

In the District Court of the United States for the
District of Oregon.

March 27, 1922.

THE UNITED STATES OF AMERICA

vs.

R. P. BUTCHART and CLARK M. MOORE.

**Order Extending Time to and Including April 30,
1922, to File Record and Docket Cause.**

Now at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record on writ of error in the above-entitled cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby, extended to and including April 30, 1922.

R. S. BEAN,
Judge.

[Endorsed]: No. 3919. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including April 30, 1922, to File Record and Docket Cause. Filed Apr. 19, 1922. F. D. Monckton, Clerk. Refiled Aug. 29, 1922. F. D. Monckton, Clerk.

In the District Court of the United States for the
District of Oregon.

No. 7308.

April 28, 1922.

THE UNITED STATES OF AMERICA

vs.

R. B. BUTCHART and CLARK M. MOORE.

**Order Extending Time to and Including June 1,
1922, to File Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS
ORDERED that the time for filing the transcript
of record on writ of error in the above-entitled
cause and docketing the same in the United States
Circuit Court of Appeals for the Ninth Circuit may
be, and the same is hereby, extended to and includ-
ing June 1, 1922.

R. S. BEAN,
Judge.

In the District Court of the United States for the
District of Oregon.

No. 7308.

June 1, 1922.

THE UNITED STATES OF AMERICA

vs.

R. P. BUTCHART and CLARK M. MOORE.

**Order Extending Time to and Including July 1,
1922, to File Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record in the above-entitled cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including July 1, 1922.

R. S. BEAN,
Judge.

In the District Court of the United States for the
District of Oregon.

June 29, 1922.

THE UNITED STATES

vs.

R. P. BUTCHART et al.

**Order Extending Time to and Including August 1,
1922, to File Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS ORDERED that the time in which to file transcript on appeal in the above cause and to docket the same in the U. S. Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including August 1, 1922.

R. S. BEAN,
Judge.

In the District Court of the United States for the
District of Oregon.

July 29, 1922.

THE UNITED STATES

vs.

R. P. BUTCHART et al.,

Defendants.

**Order Extending Time to and Including September
1, 1922, to File Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS
ORDERED that the time in which to file transcript
on appeal in the above cause and to docket the same
in the United States Circuit Court of Appeals be,
and the same is hereby, extended to and including
September 1, 1922.

R. S. BEAN,
Judge.

In the District Court of the United States for the
District of Oregon.

No. 7308.

August 26, 1922.

THE UNITED STATES OF AMERICA

vs.

R. P. BUTCHART and CLARK M. MOORE.

Order Extending Time to and Including September 15, 1922, to File Record and Docket Cause.

Now, at this day, for good cause shown, IT IS ORDERED, that the time for filing the transcript of record in the above-entitled cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby, extended to and including September 15, 1922.

CHAS. E. WOLVERTON,
Judge.

[Endorsed]: No. 3919. United States Circuit Court of Appeals for the Ninth Circuit. Orders under Subdivision 1 of Rule 16 Enlarging Time to and Including Sept. 15, 1922, to File Record and Docket Cause. Filed Aug. 29, 1922. F. D. Monckton, Clerk. Refiled Aug. 29, 1922. F. D. Monckton, Clerk.